A

HISTORICAL SKETCH

OF THE

Formation of the Confederacy,

PARTICULARLY WITH REFERENCE

TO THE

PROVINCIAL LIMITS AND THE JURISDICTION

OF THE

GENERAL GOVERNMENT

OVER

INDIAN TRIBES AND THE PUBLIC TERRITORY.

BY JOSEPH BLUNT.

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Southern District of New-York, ss.

BE IT REMEMBERED, That on the eight day of December, A. D. 1825, in the fiftieth year of the Independence of the United States of America, Geo. & Chas. Carvill, of the said district, have deposited in this office the title of a book, the right whereof they claim as proprietors, in the words following, to wit:

"A Historical Sketch of the formation of the confederacy, particularly with reference to the provincial limits and the jurisdiction of the General Government, over Indian Tribes and the public territory. By Joseph Blunt."

In conformity to the act of Congress of the United States, entitled, "An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the time therein mentioned," and also to an act, entitled, "An act supplementary to an act, entitled, an act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned, and extending the benefits thereof to the arts of designing, engraving, and etching historical and other prints."

JAMES DILL,
Clerk of the Southern District of New-York.

TO THE

HON. STEPHEN VAN RENSSELAER.

DEAR SIR,

The examination of the subject of the following remarks was suggested by the discussions, which grew out of the controversy between the state of Georgia and the general government. The extraordinary positions assumed by the executive of that state, and his vehement invectives at the violation of its sovereignty, were well calculated to attract public attention, and to induce inquiry into the justice of his complaints.

In governments of limited powers, as this confessedly is, a grave charge by the chief magistrate of a state, of an infringement of the federal constitution, is well worthy of serious consideration. It necessarily implies the existence of one of the prominent dangers, to which this republic is exposed: A design to usurp power on the part of the national government; or a factious disposition in the state authorities: consolidation and despotism on one side; disunion and anarchy on the other.

In this imperfect volume, I venture to present to the public the result of my examination into the chief topics connected with that controversy. If it be correct, it not only vindicates the federal government from all charge of undue ambition, but shows that in

its desire to conciliate the good will of the state authorities, it has conceded more than they could have reasonably demanded.

A curious coincidence too, will be found in the circumstances of those states, whose political leaders have been loudest in their complaints at the supposed infringement of their privileges, which may contribute to enlighten the public mind as to the motive of their discontent. The vehemence of their zeal in behalf of state rights, seems to have depended upon the magnitude of their territorial claims; and to have borne an exact proportion to the reluctance felt to yielding those claims to the just demands of the confederacy. Whether this zeal for those peculiar doctrines, is not merely a wish for individual, or local aggrandizement, at the expence of the general welfare; how far unfounded complaints may tend to bring the real rights of the states into disrepute; what effect these domestic wranglings may have upon the national character, and in detracting from the moral force of our institutions: are questions well worthy the consideration of all men intrusted with the direction of public affairs.

The opinions here expressed may not be in exact unison with your own; but as one of the representatives of a state which was foremost in removing the obstacles to the American union, and not behind any in a confiding and ardent attachment to the general government; I beg leave to inscribe this volume to you, as a testimony of my sincere respect for your private worth, and the disinterested spirit by which you have been actuated in your public career.

I am, sir, with great respect,

Your obedient servant,

J. BLUNT.

CHAPTER I.

Foundation of the European claims to America.—Papal Grants.—Actual Possession.—First Discovery.

The manner in which the European powers occupied the American continent, and the principles upon which this occupation was justified, and lines of division marked out between their transatlantic possessions, offer a most interesting subject for the investigation of the historian. Among the various titles to this continent derived from papal grants; first discovery; prior occupation; or actual possession; it is not easy to fix upon all the eras, when each of these different claims was first set up, nor when it was generally admitted to be valid. In most instances the opposing parties have proceeded upon different principles; until they have been brought into hostile contact, when their conflicting pretensions to American territory have been decided by an appeal to the sword.

The oldest title of the European nations is not involved in so much doubt. It was founded upon papal grants. This continent was discovered at a time when none dared to call in question the right of the vicegerent of Christ, to dispose of the countries inhabited by the heathen, according to his sovereign pleasure. The bigotted feeling, which had justified the invasion of Palestine, and the destruction

of the followers of Mahomet; though rendered less active and adventurous by the severe checks received by the catholic princes in their romantic expeditions, was still the dominant spirit of the age; and Europeans implicitly believed, that the divine origin of their religion gave to its professors the same right to all countries possessed by unbelievers, that the Israelites had to the promised Canaan, and that the Pope was authorized to distribute, in the fulness of his apostolic power, those countries, with their pagan inhabitants, among the faithful servants of the catholic church.

A striking illustration of the state of feeling prevalent in christendom, prior to the discovery of America, is to be found in the conduct of Prince Henry of Portugal, at the time he was pursuing those voyages of discovery towards the cape of Good Hope, which he had set on foot and patronized. To prevent any of the other powers from participating in the advantages which he expected to secure to Portugal, he procured at different times from Eugene IV.. then on the papal throne, bulls granting to that crown all the countries which should be discovered by the Portuguese from Cape Non to the continent of India, together with the inhabitants, whom he authorized them to enslave.*

This donation was then considered so valid, that Edward IV. of England caused John Tintam and William Fabian, subjects of his, who contemplated an expedition to Guinea, to relinquish it; because the country fell within the bounds of the grant to Portugal;† and all Christian princes, influenced by their zeal for religion, were deterred from intruding into those countries which the Portuguese had dis-

* Robertson's America, Book I. § 33

† Hakluyt, Pt. 2. p. 2.

covered. Their voyages, however, were confined to the coast of the eastern continent; and about the time that they were turning the cape of Good Hope, Columbus discovered the Antilles, by steering a western course from Europe. The existence of islands and a continent beyond the Atlantic had not before that time been suspected; and when Spain applied to the pope for a bull confirming its title to these dissoveries, Alexander VI. granted one, giving to Spain all the countries west of a north and south line one hundred leagues west of the Azores; thus leaving to Portugal an undisturbed title to all the discoveries on the eastern continent south of Cape Non; which was, as Alexander VI. construed it, all that Eugene had intended to grant.

Portugal, however, did not acquiesce in this construction; but claimed the islands discovered by Columbus in his first voyage, immediately upon his return to Spain, as within the limits of the grant by Eugene IV.; and it appears, from a memoir addressed by Robert Thorne to the English ambassador at the court of Spain, in 1527, that the Spanish crown offered to relinquish these discoveries to Portugal, as within that grant; provided the latter would restore to Spain the goods of the Spanish Jews, that had taken refuge in Portugal, according to the treaty between the two powers, by which they had mutually agreed to restore fugitive subjects with their goods.*

This agreement Portugal found it difficult to comply with; or, perhaps, the new discoveries were not then considered as worth the sum she would have been obliged to raise; and she accordingly entered into a treaty with Spain, concluded June 6, 1484, by which the line of demarcation between their possessions was fixed at 370 leagues west

* Hakluyt, Vol. I. p. 217.

of Cape de Verd, instead of the one prescribed in the bull of Alexander VI.*

At that early period, the title to newly discovered countries appears to have been derived from the apostolic power of the pope. Every Christian prince, indeed, considered himself entitled to those countries, independent of any papal grant, from the religious obligation by which they all felt bound to convert the heathen; or to drive them from the possessions they so unworthily held: and the discovery of the countries inhabited by infidels gave them the privilege of first exerting their arms for the propagation of Christianity, and also a strong claim upon the considerate bounty of the father of the church; but still, to him they looked for a confirmation of their claims, and for a distribution of the territories discovered.

This is the foundation of the European title to the American continent. The right derived from the labour and expense of discovery is a subsequent improvement, which we owe to the doctrines of the reformation and the diminution of the papal power. Had not those great changes in the religious belief of Christendom taken place, the whole of the American continent, except Brazil, which fell to Portugal under the treaty of 1494, would probably to this day have been claimed and held by the Spanish crown. The expressions in the commissions given by Ferdinand and Isabella to Columbus, by Henry VII. to Cabot, and the voyages of discovery ordered by Francis I. do not refute the proposition, that this right originated in a papal grant. The first commission authorized Columbus "to discover and conquer islands in the ocean."† It was, in fact, a permission to make war upon infidels in unknown parts, plainly beyond the limits intended to be assigned to the Portu-

* Muno's New World. † Hazard's State Papers, p. 1.

guese; and the subsequent negotiation and treaty with Portugal fully proves, that Spain did not then conceive herself so much claiming by discovery, as by grant from the pope and the consent of Portugal.

The words in the commission to Cabot, authorizing him to discover countries "which were, before that time, unknown to all Christian people,"* are thought by Judge Marshall† to imply an admission of the right of any Christian people, who had made a prior discovery: thus affording evidence of the early authority of that sort of title.

With every disposition to submit to an authority so universally and so justly respected as his, still, I cannot but incline to the opinion, that these words, though of general import, referred solely to Spain and Portugal, and that it was the expectation of Henry, that Cabot might make some discoveries which would be construed to be without their grants; although their literal meaning would comprehend them. The construction of Alexander, by which the discoveries of Columbus were taken out of the grant of Eugene, justified that conjecture; and his ceasing to take any steps, subsequent to the discoveries of Cabot, to derive any benefit from them, proves that Henry did not mean to infringe the papal grant by that expedition. After Cabot's return, it was evident that his discoveries lay within the boundaries there prescribed; and Henry appears, from that time, to have relinquished all serious thoughts of acquiring the sovereignty of unknown countries.‡

Francis I. of France, a liberal and enlightened prince, but little affected by the superstitions of his age, and, during his long and eventful reign, almost always [redacted] state of hostility with Spain, so far questioned the validity of the

* Hazard's State Papers, p. 9. † 8th Wheaton, 577.

‡ Robertson's America, Lib. 9. § 5.

papal grant, as to send out several mariners at different times upon voyages of discovery. Whatever inference might be justly drawn from these voyages, if set on foot by another catholic monarch; when the peculiar circumstances in which Francis was placed, are taken into consideration, they will appear to be but of small or no authority in favour of the right of prior discovery, unsanctioned by the head of the church.

The first expedition, commanded by Verrazano, was in 1524, in the midst of that bloody war with Spain, which was closed by the entire defeat and captivity of Francis. After this, Jacques Quartier made several voyages to Canada in the years 1534 and 1535, &c. In 1540, De Roche was sent out with Quartier by the same monarch, as his lieutenant, and in 1542, De Roche built a fort, and wintered in Canada.* At this period France and Spain were again at war; and in that state the most scrupulous catholic could not be condemned, if he did not consider the transatlantic possessions of his enemy as more sacred than those in Europe. The same right of war which would have justified the invasion and conquest of Spain, would have authorized the invasion and occupation of her American dominions.

It does not appear that any permament establishments were then made; and the title of Spain seemed to be generally acquiesced in by the European powers, except Henry VIII. who, having denied the supremacy of Rome, also questioned the validity of the gift to Spain and Portugal.

This, however, was a novel doctrine, savoring of protestantism; and more than a century elapsed after the discovery of America, before it obtained general currency.

England, indeed, adhered to that principle during the

* Harris' Collection, 811.

reigns of Henry VIII. and Edward VI.; but their successor, Mary, restored the catholic faith, and with it submission to the Spanish title to America. In her reign we hear of no claim of England to any part of this continent, nor of any voyages nor expeditions to America; although the commercial enterprise of the British nation was seeking new avenues to wealth in Russia, Turkey, and Nova Zembla.

In France, too, the same unwillingness to violate the papal grant was manifested by the catholic party; and the protestants there, as in England, led the way to its infringement. The first French colony sent to America, was under the patronage and direction of Admiral Coligny, the celebrated leader of the Hugonots; and the utter indifference manifested by the Court, at the massacre of those colonists by the governor of Florida for an intrusion upon the possessions of his master, (when no war existed between the kingdoms,) and the coldness with which the gallant avenger of his countymen (De Guerges, also a protestant) was received by the minister, proves that the catholics still regarded the claim of Spain under the bull of Alexander as valid; and that its violation by their heretic countrymen was justly punished.

This colony was planted about the year 1563.*

Shortly after the destruction of this colony in 1567, Elizabeth being securely seated on the English throne, and the protestant party having established its ascendancy upon a sure foundation, a more systematic policy seems to have been adopted by that princess, for the purpose of securing a footing on this continent. Very little stress, however, appears to have been laid upon the prior discovery of Cabot. The letters patent granted to Humphrey

* Ogilby's America, 107.

Gilbert in 1578,* and to Walter Raleigh in 1584-5,† do not refer to any such discovery. They merely authorize them to "discover and search such remote heathen and barbarous lands, not actually possessed of any Christian prince, as to them shall seem good," and to hold the soil of the country to the grantees. They were also empowered to fortify the places they chose to occupy, and to repel all persons attempting to inhabit within 200 leagues thereof; unless those places should be pre-occupied by the subjects of any Christian prince *in amity with Elizabeth.* These patents were, in truth, nothing more than authorities to annoy the Spaniards, then preparing to invade England, and to dethrone the head of the protestant party in Europe. These expeditions were hostile measures against Spain; and to Gilbert and Raleigh patents were given to encourage them in their designs. Many other subjects of that queen were engaged in voyages of discovery and adventure, as they were then called; and the only distinction made by them, as to the American discoveries in possession of Spain, and those that were not, was, to plunder the former, and to trade with the natives in the latter. The title of Spain was acknowledged to no part of America; but the whole continent was regarded as a good field for adventurous mariners, whether traders or buccaneers.

This dispute between England and Spain raged with more or less violence for many years, and may not be considered as settled until the year 1670. Previous to that time, difficulties were constantly occurring between the subjects of the two crowns in this quarter of the globe. During the reign of Elizabeth, and also under her successor, a continual war existed in America; without any reference to the European relations of their respective

* 1st Hazard's State Papers, 24. † Ib. 33.

kingdoms. A remarkable illustration of this is to be found in the efforts made by the Spanish ambassador to England (Gondamor) to procure the execution of Raleigh for an invasion of his master's possessions in the new continent. James yielded to his request, so far as to order that gallant and unfortunate soldier to be brought to the block; but, not choosing to acknowledge the Spanish title to the country in which he had landed, (Guiana,) he issued a warrant for his execution upon a sentence of death, which had been passed sixteen years before against him on another account, and which had laid dormant all that period.*

This singular state of things continued, with the general understanding among the English, that "there was no peace beyond the line," and the Spaniards, on their part, treating all visiters to their settlements as hostile invaders; until by a treaty, concluded in 1670, between England and Spain, it was agreed that "the king of Great Britain and his subjects should remain in possession of what they then possessed in America." This was the first recognition by Spain of a title to American territory in any European power but herself, and may be regarded as the era when the validity of the papal grant was formally relinquished. From this date the right of discovery, connected with occupation, may be considered to be established, and the triumph of the protestant principle over the catholic complete.

Previous, however, to the conclusion of this treaty, France, a catholic kingdom, had in some respects countenanced the protestant doctrine. In addition to what was done by Francis and Coligny, under Henry IV. (who was a protestant at heart,) colonies were sent out to the north-eastern parts of the United States and Canada; and a

* 1st State Trials, 219

commission given, dated 1603, to De Montz, constituting him Lieutenant-General in L'Acadie.*

In this document, as well as in those patents given by James and his successor in England, no mention is made of the right of discovery; but the settlement and occupation of the American continent are justified by reason of the unbelief of their inhabitants, and the desire of the grantors to extend the blessings of Christianity and civilization to barbarous, and, in some instances, almost uninhabited regions.

Henry IV. in his commission to De Montz, expresses his motive to make a settlement in L'Acadie, to be "a zealous resolution to cause the inhabitants, men without religion, to be converted to Christianity, and to draw them from the ignorance and unbelief wherein they are."

James asserts the motive of granting the first Virginia charter, 1606,† and of planting that colony, to be "the propagating of the Christian religion to such people, as yet live in darkness and miserable ignorance of the true knowledge and worship of God—and may in time bring the infidels and savages living in those parts to human civility and to a settled and quiet government."

A similar motive is declared in the second charter, 1609,‡ and, as the conversion of the aboriginals is declared to be the principal effect desired from the colony, all catholics are forbidden to go thither until they have taken the oath of supremacy. So too in the third charter to Virginia, 1611;§ the commission to Raleigh "to undertake a voyage into the south part of America," 1616;‖ the charter to the Plymouth company, 1620;¶ the grant of Nova Scotia†† and of New-Albion;‡‡ the different proclamations con-

* Hakluyt, Vol. 4. 1619. 1st Hazard, 45. † 1st Hazard, 50
‡ Ib. 58. § Ib. 72. ‖ Ib. 82. ¶ Ib. 103. †† Ib. 134.
‡‡ Ib. 160.

cerning Virginia and New-England by James; the charter to Massachusetts, 1628;* to Lord Baltimore, 1632;† the Carolina charters, 1664;‡ that to Connecticut, 1664;§ to Rhode-Island, 1664;‖ to William Penn, 1680;¶ the motive to undertaking the colonies, and the chief end of the adventures are declared to be, by means of commerce and intercourse with the natives to bring them to the knowledge of Christianity, and to bring them, by just and gentle manners, to the love of civil society.

Such are the principles upon which the Europeans justified the occupation of the American continent. The catholic and protestant monarchs differed only in this: that the former derived their title from the pope, who made the donation for the purpose of extending the kingdom of Christ; and the latter occupied the territory under the same pretence, without a grant: but neither asserted that prior discovery gave any right to the soil. The right of occupation was derived by both; either directly, or through the pope, from their obligation to ameliorate the condition and christianize the aboriginals, whose permission to make a settlement was generally asked and obtained. In the British provinces, although individual instances may be found in which Indian rights were violated; their title to the soil was always respected by the public authorities. It was not, indeed, regarded as a fee simple, which cannot properly belong to wandering tribes in a hunter state. But that they had a right to territory within certain boundaries, and that they were treated with by the colonial governments, from the first settlement of the country, until those governments became independent of the crown, to induce them to transfer and sell their title to the whites, are incon-

* 1st Hazard, 239. † Ib. 327. ‡ 4th Vol. Remembrancer.
§ Ib. Vol. 3. p. 30. ‖ Ib. 34. ¶ Ib. 104.

trovertible facts. Upon the first landing of the colonists, they purchased, in person, of the Indian chiefs the title of the tribes to tracts required for their accommodation, and afterwards made agreement for the extension of their limits upon the increase of population. Such were the purchases made by the first settlers at Jamestown and Plymouth, by the Dutch at New-York and Albany, the Swedes in the Delaware, by Baltimore in Maryland, and by Penn at Philadelphia.

Afterwards, when civil governments were established, and conquests were made at the common expense in the Indian wars, that grew out of the different habits and institutions of the two parties, the legislatures or the royal governors took the subject under their control, and prohibited citizens from purchasing the aboriginal title without public authority. In short, they assumed the right of preemption of that title, as a right of the community, and it became vested in that body, or person, that possessed the constitutional right to act in its behalf. In this manner, the sea coast of the North American continent became studded with European settlements of various nations, which extended themselves into the interior, and along the shore, until they encroached upon the limits claimed by a colony of another power. This produced a conflict of interests, generally resulting in a decision by force, in which the mother countries often, although not invariably, sustained their colonies. In discussing the respective titles of the European powers, the right of prior discovery was, of course, strongly insisted upon, especially by those whose claims were not supported by the better title of actual occupation.

All Christian princes professed to be equally desirous of civilizing and converting the savages; and as none would allow the superior qualifications of their antagonists to

impart those benefits to the aboriginals, it became necessary to appeal to some other principle, by which their clashing claims might be settled. In this dilemma, it was natural to resort to the right of prior discovery, it having been the foundation of the papal grants, and of the right of Spain. This soon became generally acknowledged as between Europeans, especially when followed by occupation; and the limits of their several claims were marked out by treaties, made at different times, by the principal powers.

CHAPTER II.

Various claims to the North-Eastern coast of America.—Provincial Charters.—French Claims.—North-West Territory.—Treaty of 1763.*—Extent of British Provinces at the commencement of the American Revolution.*

For more than two centuries after the discovery of America, the greatest uncertainty prevailed as to the limits of the territory claimed by the British colonies; and it was not until 1795, three centuries after that event, that the title of the United States to the whole territory comprehended within the boundaries marked out by the treaty of 1783, was acknowledged by Spain, one of the powers which originally disputed the British claim, and which was the last that recognized the title of the United States.

At the time of the first settlements by Europeans, no less than four powers laid claim to the sovereignty of this part of the continent; and a fifth (Sweden) actually commenced a colony upon the Delaware.

Henry IV. of France, by his commission to De Montz, dated 1603,* authorized him "to extend and establish the authority" of that monarch from the 40th to the 46th degree of north latitude. James I. of England 1606, granted to the London and Plymouth Companies, the privilege of making two settlements on any part of the coast of America between the 34th and 45th degrees of north latitude;† all which country he called "Virginia," a name given by Raleigh, in honour of his royal mistress, to the place which he undertook to colonize, about 20 years before.

* Harris's Collection, 1st vol. 813. † Hazard, 2d vol. 50.

All the territory, from Connecticut river to the westward of Delaware bay, was claimed by the Dutch under the title of the New Netherlands ;* the southern part by Spain, as part of Florida. This last power also set up the papal gift against all these powers, although her claims had then fallen into disrepute ; and finally, her adverse circumstances compelled her to relinquish a title which all but herself were interested in denying.

Such were the different claims to the North Eastern *coast* of America at the commencement of the seventeenth century ; and under these circumstances, some English adventurers, acting under the London company, undertook to make a settlement under the grant, above referred to, from James I.

By this grant they were empowered to establish a colony between the 34th and 41st degrees of north latitude ; " in that part of America," as the grant expresses it, " called Virginia, and other parts and territories in America, either appertaining unto us, or which are not now actually possessed by any Christian prince or people ;" and when they had selected a spot, the coast on either side for 50 miles, and the land 100 miles into the interior, became appropriated to that colony. The other (Plymouth) company, named in the same charter, was authorized to do the same with similar privileges between the 38th and 45th degrees of north latitude. To prevent these companies from interfering with each other, the one which should last plant a colony, was forbidden to settle within 100 miles of the other ; and as the planters had it in view to trade with the Indians, it was provided that no Englishmen should be permitted to establish themselves in the interior behind either of these colonies, without the consent of the Directors of

* Smith's History of New York, 21. Ogilbey's America, 168.

the several Companies residing in England, and appointed by the king. The colony first planted under this grant was at Jamestown, by the London company, which secured by that step a tract one hundred miles square. Finding this too small for their purposes, they applied three years afterwards for "a further enlargement and explanation of their said grant;" and in 1600 an additional grant was made to the London company in the following words:

"All those Lands, Countries, and Territories, situate, lying, and being in that part of *America*, called *Virginia*, from the Point of Land, called *Cape* or *Point Comfort*, all along the Sea Coast to the Northward, two hundred miles, and from the said Point of *Cape Comfort*, all along the Sea Coast to the Southward, two hundred miles, and all that Space and Circuit of Land, lying from the Sea Coast of the Precinct aforesaid, up into the Land throughout from Sea to Sea, West and Northwest."

The terms of this grant are very vague and indefinite. The first inquiry naturally suggested upon its perusal is: does the north and south line follow the windings and indentations of the coast, or is it to be a direct north and south line, and then to comprehend all the sea coast between the parallels of latitudes at the extreme north and south points?

But the most essential question as to its meaning is, what is intended by the phrase, "into the land from sea to sea, west and north west?" From which end of the north and south line, should the western line commence to run? and from which end, that which runs to the north-west? If the west line should run from the north end of the line, and the north-west line from the south end, as the order in which the boundaries are mentioned would lead one to conclude, they will meet before they reach the Pacific, and comprehend a tract of land of a triangular form, about as large as Pennsylvania.

But if the other construction be adopted, the west line,

commencing at the south point, will run on to the Pacific; whilst the north-west line will run up into the northern parts of America, until it strikes the Frozen Ocean; thus making the southern boundary of Virginia three thousand miles, the western boundary four thousand, and the north-eastern boundary five thousand miles in length. A construction rather too extravagant to be contended for, by a company which had only solicited an enlargement of a tract one hundred miles square.

It must also be borne in mind, that this grant was made to certain adventurers residing in England, and certain local corporations, all incorporated under the name of "The company of Adventurers and Planters for the city of London for the first colony in Virginia."

Within twenty years after the date of that grant, viz. in 1624, the company itself was dissolved by a writ of quo warranto, in consequence of the mismanagement of the colony*, and the grant formally resumed by the crown.

From that time, the land, or rather the right of pre-emption of the soil, within the limits of the grant, whatever they might have been, reverted to the crown, with the exception of such plantations as had been granted to the settlers; and the inhabitants of that colony acquiesced in its title, until the commencement of the revolution. That this right became vested in the crown, and that the charter of 1609 was no longer considered as binding, appears from the different grants of land, within those limits, to Lord Baltimore in 1632, and to the Carolina proprietors in 1663–65. In these charters were comprehended large portions of the old grant to the London company; another part of the same was given to Wm. Penn, in 1680. The two tracts granted to Baltimore and Penn, were bounded on

* Chalmer's Col. Annals, 62.

all sides by certain specified limits ;(1) but the Carolina grants extended to the South Sea between the parrallels of

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(1) The grant to Baltimore was as follows: "All that part of a peninsula, lying in the parts of America, between the ocean on the east, and the bay of Chesapeak on the west, and divided from the other part thereof by a right line drawn from the promontory or cape of land called Watkin's Point (situate on the aforesaid bay near the river of Wighco) on the west, unto the main ocean on the east; and between that bound on the south unto that part of Delaware bay on the north, which lieth under the fortieth degree of northerly latitude from the equanoctial where New-England ends; and all that tract of land between the bounds aforesaid, that is to say, passing from the aforesaid into the aforesaid bay called Delaware bay, in a right line by the degree aforesaid unto the true meridians of the first fountain of the river Powtowmack, and from thence tending toward the south unto the further bank of the aforesaid river, and following the west and south side thereof unto a certain place called Cinquack, situate near the mouth of the said river, where it falls into the bay of Chesapeak, and from thence by a straight line unto the aforesaid promontory and place called Watkin's Point, so that all that tract of land divided by the line aforesaid, drawn between the main ocean and Watkin's Point unto the promontory called Cape Charles."

To William Penn was granted, "All that tract or part of land in America, with all the islands therein contained, as the same is bounded on the east by Delaware river, from twelve miles distance northwards of New-Castle Town, unto the three-and-fortieth degree of northern latitude if the said river doth extend so far northwards; but if the said river shall not extend so far northwards, then by the said river so far as it doth extend; and from the head of the said river the eastern bounds are to be determined by a meridian line to be drawn from the head of the said river unto the said three-and-fortieth degree; the said lands to extend westward five degrees in longitude, to be com-

latitude 31 and 36. Two years after the date of the first Carolina charter, the southern and northern boundaries were augmented to the 29th degree on the south, and 36 degrees, 30 minutes, on the north.

To these different grants neither the colonists, nor the provincial legislature of Virginia made any objection as infringing their chartered bounds; nor did they, for the space of one hundred and fifty years protest against the existence of those provinces as violations of the ancient boundaries of the colony, although they diminished its size very materially, both on the north and south. It is true, that a petition was sent in upon the grant to Baltimore, to represent, that the granting away of some of their chief places of traffic would dishearten the planters;* some dif-

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puted from the said eastern bounds; and the said lands to be bounded on the north by the beginning of the three-and-fortieth degree of northern latitude, and on the south by a circle drawn at twelve miles distance from New-Castle northward and westward, unto the beginning of the fortieth degree of northern latitude, and then by a strait line westward to the limits of longitude above mentioned."

The description of the territory granted to the Carolina proprietors in the 2d charter, is in the following terms, viz. "All that province, territory, or tract of ground, situate, lying and being within our dominions of America aforesaid, extending north and eastward as far as the north end of Charahake river, or gulet upon a straight westerly line to Wyonake creek, which lies within or about the degrees of thirty-six and thirty minutes northern latitude, and so west in a direct line as far as the south-seas; and south and westward as far as the degrees of twenty-nine inclusive northern latitude, and so west in a direct line as far as the south seas."

* 1st Hazard, 337.

ficulties also occurred between the planters in Maryland, and some Virginians, as to Kent Island, which was denied to be within the limits of Baltimore's patent; but the right of the crown to grant the same was not denied.

In 1620 a grant was made to the Plymouth company of all the territory between the parallels of 40 and 48 degrees from the Atlantic to the Pacific.* By a reference to the map it will appear, that this grant comprehended three-fourths of the old north-west territory, and by a necessary consequence interfered with the grant of 1609. The extent of this interference was but small, provided such a construction was adopted, as to make the northern boundary of Virginia run in a westerly direction, instead of to the north-west. If another construction had been taken, the western extension of the Plymouth grant to the Pacific would have been a mere nullity, inasmuch as the north-eastern boundary of the London company would have cut it off before it had passed Lake Erie. In the Plymouth grant there is an exception made of the lands meant to be granted, provided any part should be actually possessed or inhabited by any other Christian nation, or within the bounds of the Southern or Virginia colony. This provision prevents any diminution of the grant of 1609 by the Plymouth charter; but the grants to Massachusetts and Connecticut, under this Plymouth company, and the subsequent proceedings thereon by the crown, shows that, in the opinion of the original grantor, the Plymouth charter did extend to the Pacific, and that it did not interfere, in the portions granted to those provinces, with the limits of Virginia.

In short, the crown acted upon the opinion, that the boundaries of Virginia had not the indefinite extension

* 1st Hazard, 337.

which was insisted upon by that province when it became an independent state. This conclusion becomes irresistible, upon an examination of the different patents. In 1628, the council of Plymouth granted a portion of the territory comprehended within the grant to that company, to certain of the first settlers in Massachusetts, described as follows, viz.*

"All that parte of Newe England, in America aforesaid, which lyes and extendes betweene a greate River there, comonlie called Monomack, alias Merriemak, and a certen other River there, called Charles River, being in the Bottome of a certayne Bay there, comonlie called Massachusetts, alias Mattachusetts, alias Massatusetts Bay, and also all and singular those Lands and Hereditaments whatsoever lyeing within the space of three English Myles on the South Parte of the said Charles River, or of any, or everie Parte thereof; and also, all and singular the Landes and Hereditaments whatsoever, lyeing and being within the Space of three English Myles to the Southwarde of the Southermost Parte of the saide Bay called Massachusetts, alias Mattachusetts, alias Massatusetts Bay; and also, all those Lands and Hereditaments whatsoever which lye, and be within the Space of three English Myles to the Northward of the said River called Monomack, alias Merrymack, or to the Northward of any and every Parte thereof, and all Lands and Hereditaments whatsoever, lyeing within the Lymitts aforesaid, North and South in Latitude and bredth, and in Length and Longitude, of and within all the Bredth aforesaide, throughout all the Mayne Landes there, from the Atlantic and Western Sea and Ocean on the East Parte, to the South Sea on the Weste Parte;

The next year, the king confirmed that grant by a charter, in which the settlers were vested with the powers of a civil and political government.

In 1631, Lord Say, and others, procured, as trustees for the settlers in Connecticut, a sub-grant from the Plymouth council of another part of the same territory, of the following description, viz.†

"All that Parte of New-England, in America, which lies and extends itself from a River there called Naraganset River, the

* 1st Hazard, 241. † Ib. 318.

Space of forty Leagues upon a straight Line *near* the Sea Shore, towards the *South West*, *West-and-by-South* or *West*, as the Coast lieth towards Virginia, accounting three English Miles to the League, and also all and singular the Lands and Hereditaments whatsoever, lying and being within the *Lands* aforesaid. North and South in Latitude and Breadth, and in Length and Longitude, *of*, and *within*, all the Breadth aforesaid, throughout the main Lands there, from the Western Ocean to the South Sea."

In 1635, the patentees of the Plymouth charter surrendered the same to the crown:* and all the territory comprehended within its limits, excepting such portions as had been conveyed to sub-grantees, became again vested in the king, in the same manner as before the date of the grant. In 1664, Charles II. granted to certain of the Connecticut settlers, and their successors, a charter of government, and confirmed and granted unto that colony,

"All that part of our dominions in New-England, in America, bounded on the East by the Narrogancett River, commonly called Narrogancett Bay where the said river falleth into the Sea, and on the North by the line of the Massachusetts plantation, and on the South by the Sea, and in Longitude, as the line of the Massachusetts colony running from East to West, (that is to say) from the said Narrogancett Bay, on the East, to the South Sea on the West part."†

This charter was given subsequently to the surrender of the Virginia and Plymouth charters; and the crown, in which was then vested the right to explain, extend, or diminish the boundaries of all colonies which were under the royal government, declared the western boundary of Massachusetts to be the Pacific, and assigned that to Connecticut also, as its western boundary, granting to that colony all the territory to the eastward thereof, within certain north and south boundaries. About twenty years after the granting of the Connecticut charter, the first Massachusetts charter

* Chalmers, 95. † 2d Vol. Remembrancer, Appendix, 32.

was vacated by the judgment of the king's bench; and upon the accession of William and Mary, a new charter was granted to Massachusetts, in which her boundaries were described as follows, viz.*

"All that part of New England, in America, lying and extending from the great river commonly called Monomack, alias Merrimack, on the north part, and from three miles northward of the said river to the Atlantic or Western Sea, or Ocean, on the South part, and all the lands and hereditaments whatsoever, lying within the limits aforesaid, and extending as far as the outermost points or promontories of land, called Cape Cod and Cape Malabar, north and south in latitude, breadth, and in length, and longitude, of and within all the breadth and compass aforesaid, throughout the main land there, from the said Atlantic or Western Sea and Ocean on the east part, towards the South Sea, or westward, as far as our colonies of Rhode Island, Connecticnt, and the Narragansett country. And also all that part and portion of main land, beginning at the entrance of Piscataway Harbour, and so to pass up the same into the river of Newichwannock, and through the same into the furthermost head thereof, and from thence north-westward, till one hundred and twenty miles be finished, and from Piscataway Harbour's mouth aforesaid, north-eastward along the sea coast, to Sagadohock, and from the period of one hundred and twenty miles aforesaid, to cross our land to the one hundred and twenty miles before reckoned up, into the land from Piscataway harbour through Newichwannock river; and also the north half of the isles of Shoals, together with the isles of Capawock and Nantuckett, near Cape Cod aforesaid; and also the lands and hereditaments lying and being in the country or territory commonly called Accada or Nova Scotia, and the said river of Sagadock, or any part thereof."

In this second charter to Massachusetts, was included the territory belonging to the Plymouth colony, which before that time had existed as a separate province. The southern boundary consequently does not commence, as before, to the south of Charles river, but runs along the boundary of Rhode Island and Connecticut. The tract conveyed to

* 2d Remembrancer, Appendix, 10.

Rhode Island, in the year 1664, is described in the note,(1) and the extent of Connecticut appears by her charter of the same date.

These two last charters, granted to Massachusetts and Connecticut, so long after the resumption of the Virginia and Plymouth patents, gave, so far as the king of Great Britain could give, the territory between the north boundary

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(1) "All that part of our dominions, in New-England, in America, containing the Nahantick and Nanhygansett, alias Narragansett Bay and countries and parts adjacent, bound on the west or westerly to the middle or channel of a river there commonly called and known by the name of Pawcatuck, alias Pawcawtuck river, and so along the said river, as the greater or middle stream thereof reaches or lies up into the north country, northward unto the head thereof, and from thence by a straight line drawn due north, until it meet with the south line of the Massachusetts colony, and on the north or northerly by the aforesaid south or southerly line of the Massachusetts colony or plantation, and extending towards the east or eastwardly three English miles to the east and north-east of the most eastern and north-eastern parts of the aforesaid Narragansett Bay, as the said bay lieth or extendeth itself from the ocean on the south or southwardly, unto the mouth of the river which runneth towards the town of Providence, and from thence along the eastwardly side or bank of the said river (higher called by the name of Seacunck river) up to the falls called Patucket falls, being the most westwardly line of Plymouth colony: and so from the said falls, in a straight line due north, until it meet with the aforesaid line of the Massachusetts colony, and bounded on the south by the ocean, and in particular the lands belonging to the town of Providence, Patuxit, Warwicke, Misquammacock alias Pawcatuck, and the rest upon the main land, in the tract aforesaid, together with Rhode-Island, Blocke-Island, and all the rest of the islands and banks in the Narragansett Bay, and bordering upon the coast of the tract aforesaid."

of Massachusetts and the south boundary of Connecticut, from the Atlantic to the Pacific, to the inhabitants of those colonies. They contained no provision in favour of the right of the Virginia colony; and as the boundaries of that province then depended upon the royal will, no legal exception could be taken to the validity of the grants to the New England provinces, even supposing that that construction should have been given to the charter of 1609, which would occasion a clashing of the claims of the different grantees. If, however, the less violent construction should be given to the Virginia patent, no interference on the part of Massachusetts and Connecticut will take place; but all the grants will have their legitimate and literal effect, without supposing any inconsistency on the part of the grantor.

These were the only charters given by the crown, prior to the surrender of the Carolina charter in 1728; and the proper conclusion to be drawn therefrom would be, that so far as the British crown had power to grant, the proprietors of Maryland, Pennsylvania, Carolina, and the colonists of Massachusetts and Connecticut, as bodies politic, possessed the territory within the boundaries prescribed in their respective charters; whilst the boundaries of Virginia were left undefined by the charter of 1609, and also by the proclamation of Charles I. establishing a government upon the dissolution of that charter,* and depended upon the pleasure of the crown.

The territory now included within the boundaries of New-York, New-Jersey and Delaware, was differently situated. Colonies of the Swedes and of the Dutch had been established in those parts; and although the Swedes had submitted to the government of the Dutch, and thus simplified the question as to the European title, still the English title was disputed by the Dutch, who claimed it as the first

* 1st Hazard.

actual occupants. Such is the ground upon which their title is placed by governor Stuyvesant, in his answer* to Richard Nicholls, who demanded a surrender of the colony, as within the territory belonging to Great Britain. It is worthy of observation, that even at this late period, although the voyage by Hudson, in the Dutch service, had previously been alluded to, as an argument in favour of the Holland claim, the Dutch governor did not refer to prior discovery as a ground of title; nor did the states Netherland, in their original grant to the West India company, allude to Hudson's voyage.† Colonel Nicolls, on his part, did not trouble himself with arguments in favour of his master's claim; but calling it unquestionable, demanded an immediate surrender to the British arms.

This expedition was fitted out to reduce the colony of the New Netherlands, by Charles II. who shortly after his restoration, in 1664, had granted to his brother afterwards, James II. the territory claimed by the Dutch.

The boundaries of New-York were described in the following manner, viz.‡

"All that part of the main land of New England, beginning at a certain place called or known by the name of St. Croix, next adjoining to New Scotland, in America, and from thence extending along the sea coast unto a certain place called Pemaquie, or Pemaquid, and so up the river thereof, to the furthest head of the same, as it tendeth northward; and extending from thence to the river of Kimbequin, and so upwards by the shortest course to the river Canada northward; and also all that island or islands commonly called by the several name or names of Meitowacks, or Long-Island, situate and being towards the west of Cape Cod and the narrow Higansetts, abutting upon the main land, between the two rivers there, called or known by the several names of Connecticut and Hudson's river, together also with the said river called Hudson's river, and all the land from the west side of Connecticut river, to the east side of Delaware bay, and also all those several islands, called or known by the names of Martin's Vineyard, or Nantuck's, otherwise Nantucket."

* Smith's History of New-York, 37. † Hazard, 1st vol. 121.
‡ Smith's New-York, 31.

Part of this tract was conveyed the same year, by the Duke of York, to Lord Berkley and Sir George Carteret, under the description of New-Jersey.

The boundaries of New-Jersey were as follows:

"All that tract of land adjacent to New England, and lying and being to the westward of Long Island, and bounded on the east part of the main sea, and partly by Hudson's river; and hath upon the west, Delaware bay or river, and extendeth southward to the main ocean as far as Cape May, at the mouth of Delaware bay; and to the northward, as far as the northermost branch of the said bay or river of Delaware, which is forty-one degrees and forty minutes of latitude; which said tract of land is hereafter to be called by the name or names of Nova Cæsarea or New-Jersey."

The Dutch governor of New-York being unable to offer effectual resistance, surrendered to the commanders of the English forces; and the settlements on the west bank of the Delaware, dependent on New Amsterdam, followed his example. These last settlements were strictly without the grant to the Duke of York; but being captured from the Dutch, were annexed to the government of New-York, as they had been before the conquest; and so continued until they were conveyed by the description of the lower counties on the Delaware, to William Penn. Penn at first annexed these counties to his province; but difficulties afterwards arising between their representatives and those from Pennsylvania, he assented to their request for a separation; and they afterwards constituted a separate province.

Part of the territory included within the boundaries of New-York, was also claimed by the colonies of Massachusetts and Connecticut. Their claims were rested on the ground of the prior occupation of the Dutch, and the special exception in their grants of all such parts of the said territory as should be previously occupied by any Christian people. As to such parts of New-York as had been then taken possession of by the Dutch, no doubt could be enter-

tained, that they were not comprehended within the grants to Connecticut and Massachusetts; and as to the uninhabited parts, conflicting claims as to boundary lines arose, which were settled, by commissioners, with Massachusetts in the year 1787, and with Connecticut, first with the Dutch, in 1650, and finally in 1683.

In this manner all the sea coast of North America, from the southern boundary of Acadia to the northern boundary of Florida, was claimed and parcelled out into different provinces by the British crown. Acadia also had been conquered from France by Cromwell; but Charles, in 1668, receded it, without any specification of boundaries; and thus the northern boundary remained unsettled, until the treaty of Ryswick, when it was fixed at St. Croix.

The southern boundary was partially agreed upon by the treaty of 1670, in which it was assented to by Spain, that Great Britain should possess what her subjects already occupied in America. This was recognizing a principle by which the difficulties might be adjusted; but, although provision was made by the treaty of Seville, in 1729, for the appointment of commissioners, and, by the convention of Pardo, in 1739, of ministers for that purpose, no measures were taken to settle this very indefinite boundary between Carolina and Florida; until the treaty of 1763 put Florida into the possession of Great Britain, and thus obviated the necessity of any decision upon the question.

To the north, although the claims of France were settled in the manner above described, conflicting claims arose between the province of Massachusetts, and Mason and Gorges, sub-grantees of the old Plymouth company. To the former had been conveyed, in the year 1635, the following tract :—

"All that part of the Mayn Land of New England aforesaid, beginning from the middle part of Naumkeck Run and from thence to proceed eastwards along the Sea Coast to Cape Anne,

and round about the same to Pischataway Harbour, and soe forwards up within the river of Newgewanacke, and to the furthest head of the said River, and from thence northwestwards till sixty miles bee finished, from the entrance of Pischataqua Harbor and also from Naumkecke through the River thereof up into the land west sixty miles, from which period to cross over land to the sixty miles end accompted from Pischataway through Newgewanacke River to the land northwest aforesaid; and alsoe all that the South Halfe of the Isles of Sholes, all which lands, with the Consent of the Counsell shall from henceforth be called New-hampshyre: And also ten thousand acres more of land in New-England aforesaid, on the south-east part of Sagadihoc."*

This tract afterwards formed the province of New-Hampshire.

The same year Ferdinand Gorges obtained a grant from the same company, (which was, in the year 1639, confirmed by the king,) of the following tract, viz:—

"All that parte, purparte and portion of the maine land of New-England aforesaid, beginning at the entrance of Piscataway harbour, and soe to passe up the same into the River Newichawockee, and through the same into the farthest head thereof; and from thence northwestwards till one hundred and twentie milles be finished, and from Piscataway harbor mouth aforesaid north Eastwards along the sea coast to Sagedahadocke, and up the River thereof to Knybecky River; and through the same to the heade thereof, and unto the land Northwestwarde, until one hundred and twentie milles be ended, being accounted from the mouth of Sagedehadocke and from the period of one hundred and twentie milles aforesaid, to crosse over land to the hundred and twentie milles, and formerly reconed up into the land from Piscataway harbor through Newichawocke River: and also the North halfe of the isles of Shoals, together with the isles of Capawocke nere Cape Cod."†

This is now a part of the state of Maine. The residue of that state was added, by the orders of William and Mary, after the French had relinquished their claims to the north of New-England, and was placed under the government of Massachusetts, upon the renewal of the charter of that state, in 1792.

* 1st Hazard, 384. † Ib. 442.

After the grant to Mason, and before any decisive steps had been taken to confirm his title, some of the settlers of Massachusetts had established themselves beyond the northern boundary of that state, and having purchased the Indian title, disclaimed the proprietorship of Mason. In this they were supported by the general court of Massachusetts, which did not relish the idea of a distinct community in their neighbourhood, acknowledging the supremacy of a proprietor of the cavalier, or high church party. During the civil war in England they succeeded in establishing, with the consent of the settlers, the government of Massachusetts over the New-Hampshire settlements. This continued for many years after the restoration, during which time the heirs of Mason and Gorges, sustained by the British court, were engaged in a dispute with the settlers, who were supported by the general court of Massachusetts. Mason and Gorges claimed under the paramount title of the crown; and the settlers under Indian grants: and such was the opposition to the grantees of the king, that they were unable to establish their claim. The heirs of Gorges compromised with the government of Massachusetts about the year 1674, and transferred to that province his claim, and Mason assented to the steps taken on the part of the crown to subdue the opposition of Massachusetts. As a preliminary step, Mason gave up all powers of government as proprietor or feudal lord. Charles accordingly erected New-Hampshire into a royal province; and though Massachusetts again resumed the reins of government upon the deposition of Andross, in 1689; still the advisers of William and Mary did not think proper to annex New-Hampshire to Massachusetts, and it was accordingly placed under a sort of provisional government, dependent on the pleasure of the crown; in which state it remained until the American revolution.

Very little is to be found in the history of this dispute,

illustrating the questions which arose at the formation of our government, as to the right of pre-emption to vacant lands, and Indian titles, excepting the early denial by the general court of Massachusetts of the paramount right of the king. This was more remarkably exemplified afterwards, by their resistance to the claims of Andross. He demanded of the inhabitants of that province a patent tax, or pre-emption fee, on the ground that they had purchased their lands of the aboriginals without the consent of the king; and with that contempt of the Indian rights which has lately characterized the proceedings of the executive of Georgia, he told the settlers, that "he did not regard the Indian deeds as better than the scratch of a bear's paw."

The result of this controversy was the seizure of Andross by the people of Massachusetts, who sent him to England. When this event occurred the inhabitants of the New-England provinces assumed the powers of government, according to their old charters, without waiting for directions from England.*

There was always a remarkable difference between the principles of the New-England people, and those of the southern provinces, as to their relations with the British crown. The latter were royal, or proprietary provinces, and deduced their title to the soil from royal grants, and generally deferred to the authority of the crown. The former appealed, indeed, to their charters, as a protection against European encroachments; but they regarded their title to the soil as based upon their labour, and actual occupation with the consent of the aboriginals.

The latter acknowledged the power and right of the crown, and of their proprietors, to alter and change their chartered limits at pleasure. The eastern people contended that their charters were given to the colonists themselves, and

* Chalmers, 469.

could not be altered without their consent. Massachusetts, Connecticut, and Rhode-Island, therefore, assumed, upon the overthrow of the despotic government of the Stuarts, the powers of government under their old charters, which had been declared forfeited. Massachusetts, indeed, subsequently submitted to accept of a new charter with extended boundaries; but the other colonies existed under their original patents until after the revolution.

The difficulties that the authorities at home met with in subduing the refractory spirit of Massachusetts, and the necessity which they conceived to exist of adopting some general system of government for the North American settlements, after the British revolution, induced them to negociate for the surrender of the proprietary governments.

The proprietors of New-Jersey were persuaded to surrender their province to the crown in 1702, and the proprietors of Carolina followed their example in 1728. William Penn also entered into an agreement for the surrender of his proprietary rights, but was prevented by sickness from executing it.

After these surrenders the British colonies continued, until the French war in 1756, in the following state, viz:— The provinces of Maryland, Pennsylvania, and Delaware, were proprietary; those of New-Hampshire, Virginia, New-York, New-Jersey, and the Carolinas, were subject to and dependent upon the crown; the other New-England provinces were of a peculiar character, holding charters granting to the colonists themselves certain boundaries and powers of government.

The proprietary provinces, as well as Rhode-Island and New-Jersey, were confined within specified and limited boundaries: but the chartered boundaries of Massachusetts, Connecticut, Virginia, and Carolina, were not defined to the west, except by the South Sea.

The boundaries of New-Hampshire, after it became a

royal province, were not accurately defined; but she had no pretension to any land beyond the Connecticut river. New-York had a vague and indefinite claim, like that of Virginia. It had become a royal province by the accession of the grantee to the crown; and as its boundaries were not limited to the north nor to the west, except by *Delaware bay*, which runs in a north west direction, so far as it continues to be a bay, it stood in a peculiar situation: Massachusetts and Connecticut claiming, on their part, a large portion of the territory within its present limits, as within their charters, and New-York resisting their claim, upon the ground of the actual occupation of the Dutch, prior to the granting of those charters—a case specially provided for in those instruments; and the restriction of the western boundary of Connecticut, by different agreements, in 1650, 1664, and 1683, by which the division line between that colony and New-York was to be 20 miles to the east of Hudson river; and that consequently the western boundary of Massachusetts, as prescribed by the second charter, given subsequent to the settlement of that boundary, could not be extended farther to the west than the line so agreed upon. The exercise of the powers of government by the public authorities of New-York, for a long series of years, over the land in dispute, was also strongly insisted upon. While New-York thus resisted the claims of the eastern provinces, she had an indeterminate and extensive claim to the north western territory, founded upon its relations with those Indian tribes, then known as the five, and afterwards as the six nations.

These tribes claimed, either in their own right or as belonging to their tributaries, most of the territory south of Lake Erie, and bordering on the Ohio. They also claimed the whole of the western part of the state of New-York. The extent and limits of their claim will more particularly appear by an examination of the maps of the early geogra-

phers and travellers. Vide Van Kenlen's Atlas, 1720, Bellin's maps, 1774, Hennopin and Ogilby, 166.

This claim of theirs, indefinite as in its nature it necessarily was, was so far acknowledged by the other provinces, that the governors of Maryland, Pennsylvania, Virginia, and New-York, thought it necessary to procure their assent to any occupation of the lands west of the Alleghany: and by the proceedings of a council, held in 1744, for the purpose of concluding a treaty with the six nations, it appears not only that their title to the western lands was unquestioned, but that these tribes were under the special jurisdiction and superintendance of New-York.* This special and exclusive jurisdiction of the provincial government of New-York over the six nations and their territory; the acknowledgment by those tribes of the sovereignty of that state, and the acquiescence of the other provinces in the claims of New-York, and their reiterated applications to the governor and council to treat with those Indians, through and with their consent, are facts as conclusively established as any events in our colonial history. The records of the province, from the time of its surrender by the Dutch, in 1664, to the era of the American revolution, are full of proceedings demonstrating the above propositions. Virginia, in particular, acknowledged the jurisdiction of New-York, at sundry times. In 1691, the governor of that province treated with those nations through the governor of New-York. The next year he requested that all the Indians living beyond the Appalachian mountains, whenever they might travel to the south thereof, should procure New-York passes; and in 1721, the legislature of Virginia passed an act recognising that same line as the boundary between the Indians, under the respective jurisdiction of the two provinces.

Subsequent thereto, about 1740, it was agreed at Albany,

* Colden, Appendix, from 99 to 130.

that the Indians subject to Virginia should not go to the westward of those mountains without passports from the governor of Virginia; and that the Indians living west thereof should not go to the east without a New-York passport.* Thus settling, as far as it was then necessary, the boundaries of the two governments.

Indeed, the validity of the claim of the six nations to the western territory, the dependence of those nations upon New-York, and the acquiescence of Massachusetts, Connecticut, Virginia, Maryland, and Pennsylvania, in that dependence, are to be seen in all the colonial records. They are more particularly set forth in a report by a committee of congress, which will be found in the next chapter.

The southern limits of Carolina were still undefined, and the creation of a new province within its limits, shortly after the surrender of the charter, viz. in 1732, by the name of Georgia, became the cause of additional embarrassment. In that year, general Oglethorpe, and some other charitable individuals, formed an association for the purpose of establishing a colony in the southern part of Carolina, for the reception of their impoverished and destitute countrymen. With this view they procured to themselves, "as trustees for establishing the colony of Georgia, in America," a grant from the crown of "seven-eighths of the territory lying between the Savannah river and the Alatamaha, and westward between the heads of those rivers respectively, in direct lines to the South Sea." The one-eighth of the above territory was reserved to satisfy the claim of lord Carteret, who had not then surrendered his title as proprietor of Carolina.

It was furthermore provided in this charter, that at the end of twenty-one years, the powers of government within the province should revert to the crown.

* Colden, Appendix, 121.

The head of the Alatamaha, one of the rivers mentioned in the Georgia charter, extends to the 34th; the head of the Savannah to the 35th degree of north latitude. Hence, under that grant, the trustees of Georgia took only the territory between those rivers, and a tract, sixty miles wide, extending between the heads of the same rivers westward to the South Sea, provided Great Britain had then the right to grant the same; but if not, then only so far as her right extended.

In 1752, the trustees surrendered their charter to the crown, and thus placed this province upon the same footing with South Carolina, of which Georgia formerly made a part, and which still possessed and exercised jurisdiction over a large tract of territory south of the Alatamaha.*

Until this time the British colonists had confined themselves to the sea coast; and although their charters represented them as extending westward to the Pacific; still their titles were unaccompanied by possession, and other powers entirely disregarded them, or looked upon them as merely empty claims. Whatever might have been the construction afterwards put upon these grants, at that time the boundaries of the provinces, and the jurisdiction of their legislatures, did not reach beyond the Apalachian mountains.

They now found an unexpected claimant in their rear: Canada, on the north, and Louisiana, on the south, had been claimed and occupied by France, in the same manner as the British had established themselves upon the intermediate sea coast; and the title of France to those countries was regarded as indisputable as the English title to British America.

By right of discovery, followed by occupation, which

* Report of the Attorney-General of the United States to Congress, from page 100 to 144.

had now become a valid title, the French crown claimed the Mississippi and its branches, and, as a corollary from that proposition, the lands, to a reasonable extent, watered by those streams. In the prosecution of that claim, the French had (subsequent to 1673, when the French first visited the Mississippi by the way of Canada,* and, consequently, first explored or traversed the Illinois country or western territory, and 1683, when its mouth was entered by La Salle) sought to establish themselves at the mouths of the Mississippi and Alabama, and to extend their settlements and forts to the interior along the course of those rivers and their branches. Between the beginning and the middle of the eighteenth century, they had established themselves at Mobile, New-Orleans, Tombechbe, and Tholouse in the Alabama territory,† and built forts at those places for the protection of their traders and settlers. Advancing thus up the valley of the Mississippi, from the gulf of Mexico in a northern direction, and up the St. Lawrence and the lakes from the gulf of St. Lawrence, in a south-west direction, and having traversed the intermediate territory, the French conceived the idea of anticipating the growth of their settlements, and of uniting the two governments by a chain of forts along the course of the Ohio. By this step they would have confined the English colonies to the eastward of the Alleghanies, and secured to France the western territory, and the greater part of the Indian trade. Between 1743 and 1754, the governor of Canada took measures to execute this resolution, by causing forts to be erected and troops stationed at Kaskaskia, at posts established at the mouth of the Missouri and on the Illinois and Miami, at Natchez, and at Du Quesne, now Pittsburgh.‡ In this manner France endeavoured to establish her claim to the Illinois country, and to place it upon the solid footing of actual occupation.

* Marshall's Washington, 349. † Pownall, Appendix, 23.
‡ Ib. 24, 25.

On the other hand, the colonists, alarmed at the rapid strides of the French, took measures, although somewhat later, to obtain a footing in the same country. Influential individuals in England and America associated themselves under the name of the Ohio company, and procuring a grant from the *crown* for 600,000 acres of the land in dispute, prepared to establish trading houses among the Indians.*

Upon hearing of this, the governor of Canada gave notice to the governors of New York and Pennsylvania, that he should regard any encroachment upon the lands westward of the Alleghanies as a violation of the territories of France; and in pursuance of that notice, arrested the English trading among the Indians, and confined them as prisoners. By this step the titles of England and France to the country west of the Appalachians were put in issue; and directions were sent out to the governors of the British colonies to take effectual measures to dislodge the French from their posts on the Ohio. Similar directions were not given respecting the posts on the Tombeckbe, and in the Alabama territory, as they were considered as more particularly belonging to the French.

Union was recommended to the colonies, and commissioners from the different provinces met at Albany, to concert measures for mutual defence.

Pennsylvania being a proprietory province, and from its pacific character an unsafe dependence, when it became incumbent to resort to arms, Virginia, as the nearest royal province to the scene of danger, was the foremost in taking the necessary steps to vindicate the title of the British crown.

In 1753 the assembly of Virginia, pursuant to the policy then adopted, passed an act for the encouragement of set-

* 1st Marshall's Washington, 354.

tlers on the waters of the Mississippi.* This is the first act by the provincial government of that colony, in which any jurisdiction was claimed over the western territory. In 1754, another act for a similar purpose was passed; and two hundred thousand acres of land on the western waters, one hundred thousand of which were within the limits of Pennsylvania,† were also promised by the royal governor to the officers of a regiment, raised to resist the encroachments of the French. This regiment afterwards marched to remove the French, at the confluence of the Alleghany and Monongahela; and in that attempt hostilities were formally commenced. This war had for its object the establishment of the title of England to the western territory. The British crown did not, even then, claim all the Illinois country; but claiming enough, so as to be able to make concessions in the course of negociation, she particularly resented the occupation by the French of posts so near her colonies as Du Quesne, and regarded it as an attempt to expel her subjects from the continent.

To which of the belligerents the part of the country in dispute belonged, according to the European doctrine, it would be difficult to decide. If it be admitted that England, as the first discoverer and occupant, had a right to the country inland, the extent of her claim to an immense and unexplored continent like this, would still be in doubt.

France would have a title to Canada on the the north, and Louisiana on the south, upon the same principles upon which England founded her claim to the thirteen colonies; and the configuration of the sea coast would necessarily oblige the English to diminish their western limits, as prescribed by their charters; or the French to abstain from making any settlements in the interior. They could not both extend their claims, upon right lines, into the bosom

* 3d vol. Secret Journal of Old Congress, 187. † Vide Appendix.

of the continent, and it was obvious that neither possessed such a manifest superiority of title, as to put an end to the controversy.

The territory, it is true, fell within the chartered limits of several of the British provinces; but France did not feel bound by the patents of another power to which she had never assented, and which necessarily contravened the principles by which the occupation of the American continent was justified.

The date of the different settlements afforded no criterion by which the question could be settled. In 1542 a French governor wintered in Canada. In 1563 the protestant settlement under Laudownian was established in Florida. These were of earlier date than the temporary colonies planted by Gilbert and Raleigh; but they were also ephemeral, and little or no stress could be laid upon them as proofs of the title of France. The date of the commission to De Montz was earlier than the first grant to the London and Plymouth companies, and in this point the French had the advantage; but, on the other hand, the English settlements were extensive and permanent, evincing a fixed design to cultivate the soil, and to reduce the wilderness to the power of civilized man.

The French, on their part, urged that the British settlers were confined to the Atlantic coast, and that the Apalachian mountains formed a natural boundary to their possessions, beyond which they had never attempted to advance, until they found the French in actual possession of the valleys of the Mississippi and Ohio.

In this state of things all felt, that the interior boundary must be settled, by negociation or force; and, like most controversies between nations of equal strength, it was ultimately defined by treaty after a long and expensive war. To the prosecution of this contest the colonies freely contributed men and money; and Massachusetts and

New-York were particularly distinguished for their exertions in subduing the common enemy. When the preliminaries to a treaty of peace were proposed, the arms of England were successful by sea and by land, and she did not feel satisfied with a mere definition of the dividing line between the American possessions of France and England; but insisted upon retaining those parts which had fallen into her hands by the fortune of war. These terms France and Spain, which had been drawn into the contest after it had begun, were obliged to accede to; and at the treaty of peace, France ceded to Great Britain, Canada, Mobile, and all that she was entitled to east of the Mississipi; and Spain, on her part, ceded Florida, and all that was claimed by that crown to the east or south-east of the same river.

By this treaty the European title of Great Britain to all the country east of the Mississippi became complete; and it is rendered difficult by these cessions to point out, with precision, what portions of this territory were acquisitions from France and Spain, and what before properly belonged to England; but to which the title was contested by one or both of those powers.

Some prominent points, however, are more easily ascertained; and from these it may be fairly concluded, that the greater part of territory included between the Mississippi, the great lakes, and the Alleghanies, belonged to France, and was regarded by Great Britain as acquisitions from that power at the conclusion of the war.

For instance, the title of Great Britain to the province of Georgia, even on the sea coast, was disputed by both France and Spain; and by the tenth article of the treaty of perpetual alliance between those powers concluded in 1743, it was agreed, that their majesties would take measures to compel the English to destroy that colony, "the establishment of which" (it is there asserted) "the English have not

been able to justify by any good title." While the British title to the Atlantic part of this province was in doubt, the title of France to the interior thereof beyond the Apalachian mountains was also denied by a few, but with as much reason as the British title to Savannah. Its settlement on the Mobile and in the Alabama territory had been established without complaint, and its right of possession was undisputed. The greater part of what now composes the states of Mississippi and Alabama, and probably the state of Tennessee, may be therefore regarded as part of the acquisitions from France in the war of 1756. The whole of the territory north of the Ohio, and east of the Mississippi, is to be ranked in the same description.

The following facts prove this beyond controversy. It must be borne in mind, that France had first explored this tract of country, and then held actual possession thereof.

When the war was about commencing, England proposed to France the following boundary line between their American possessions, viz: "A line to be drawn from the junction of the river Des Boeufs with the Ohio at Venango up the river to Lake Erie, and in a right line from Venango to the last of the mountains of Virginia which descend towards the ocean."* By this arrangement England would have relinquished all the territory now forming the states of Kentucky, Ohio, &c., and part of Virginia and Pennsylvania. It was also proposed, that the aboriginals should occupy, as independent nations, the country between this line and the Mississippi, and that it should have nothing in common with the colonies.

Afterwards, upon the failure of the French arms, that power proposed to cede Canada to England, and the discussion turned upon the boundary between Canada and

* 4th Secret Journal, 74.

Louisiana, to one of which colonies, France contended, all the western country appertained. The English minister denied that proposition, and the French negociator replied, that France did not pretend that what was not Canada was Louisiana, but demanded that the intermediate nations between Canada and Louisiana, and Virginia and Louisiana, should be considered independent, and a barrier between the French and English.*

Mr. Pitt admitted that those nations did form the true barrier between the provinces, but would not admit them to be within the limits of Louisiana.† He maintained that a part of them were independent, a portion under the protection of Great Britain, and that the crown had purchased a part of that country from the Six Nations. As to the course of the Ohio and the adjoining country, France contended, that it belonged to Louisiana; and England that it was within the limits of Canada, together with all the territory between the lakes, the Mississippi, the Ohio, and the Wabash, and appealed to the French maps to prove it.‡

Upon peace being concluded, Gen. Gage, the commander of the British forces in North America, issued a proclamation in February, 1764, in which he says, "Whereas by a treaty of peace, concluded at Paris, February 10, 1763, the country of the Illinois has been ceded to his Britannic majesty, and the taking possession of the same by the troops of his majesty, though delayed, has been determined upon;" he therefore exhorts the inhabitants to submission.§

The preamble to the celebrated proclamation of 1763

* 5th Entick's History, 170.

† Note to Mr. Bussy, July 29, 1761. Ib. 122.

‡ Ib. 171. 4th Secret Journal, 75.

§ 1st United States' Laws, 507.

also regards these territories as acquired by the treaty of peace. (Vide note.)*

It then proceeds to erect the provinces of Quebec, East and West Florida, within those countries ceded, and to add to Georgia "all the lands lying between the rivers Alatamaha and St. Mary's." This augmented the old chartered limits of Georgia, according to the ordinary meaning of terms, to a line drawn from the head of the St. Mary's to the head of the Alatamaha. Still it did not comprehend all within the present limits of Georgia, and none of the territory now forming the states on the western border. The next year, however, (1764,) James Wright was commissioned as governor "in and over the province of Georgia," described as follows :—

"Bounded on the north by the most northern stream of a river there commonly called Savannah, as far as the head of said river, and from thence westward as far as our territories extend; on the east by the sea coast from the said river of Savannah to the most southern stream of a certain other river called St. Mary;

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* *Proclamation of the king of Great Britain (of the 7th October, 1763.)*

BY THE KING, A PROCLAMATION.

George R.

Whereas we have taken into our royal consideration the extensive and valuable acquisitions in America, secured to our crown by the late definitive treaty of peace, concluded at Paris the 10th day of February last; and being desirous that all our loving subjects, as well of our Kingdoms as of our colonies in America, may avail themselves, with all convenient speed, of the great benefits and advantages which must accrue therefrom to their commerce, manufactures, and navigation."†

† 1st United States' Laws, 443.

including all islands within twenty leagues of the coast, lying between the said rivers Savannah and St. Mary as far as the head thereof, and from thence westward as far as our territories extend by the north boundary line of our provinces of East and West Florida."*

By the proclamation of 1763, the boundary of East and West Florida was declared to be a line running from the source of St. Mary's river to the junction of the Flint river with the Apalachicola, thence up the latter river to the 31st degree of north latitude, and thence due west to the Mississippi. By this description of the boundary of the Floridas, coupled with the commission to Governor Wright, it would seem, that all the territory acquired from France, between Florida and the 35th degree of north latitude, was annexed to Georgia, and intended to form a part of that province.

In the same proclamation, however, there is a provision relating to the Indians and their lands, which materially diminishes the force of this conclusion. The crown, intending to carry into effect the proposition, so often stated in the course of the previous negociation with France, declared in that document that it was

"Just, and reasonable, and essential to our interest and the security of our colonies, that the several nations or tribes of Indians, with whom we are connected, and who live under our protection, should not be molested or disturbed in the possession of such parts of our dominions and territories as, not having been ceded to or purchased by us, are reserved to them or any of them, as their hunting grounds; we do therefore, with the advice of our privy council, declare it to be our royal will and pleasure, that no governor or cammander-in-chief in any of our colonies of Quebec, East Florida, or West Florida, do presume, upon any pretence whatever, to grant warrants of survey, or pass any patents for lands beyond the bounds of their respective governments, as prescribed in their commissions; as also, that no governor or commander-in-chief of our other colonies or plantations in America do presume, for the present, and until our further pleasure be known, to grant warrants of survey, or pass

* United States' Laws, 449.

patents for any lands beyond the heads or sources of any of the rivers which fall into the Atlantic Ocean from the west or northwest; or upon any lands whatever, which, not having been ceded to, or purchased by us as aforesaid, are reserved to the said Indians or any of them."*

All the lands beyond the mountains, and not within the governments of Quebec or Floridas, were thus reserved under the sovereignty, protection and dominion of Great Britain, for the use of the Indians; and all persons were enjoined to remove from the same, and not to make any settlements within those limits for the future.

By this arrangement, all the country above the north boundary of Florida, between the Mississippi and the Appalachians, as far north as a line drawn from Nipissim to the St. Lawrence, was reserved for the use of the aboriginals. At the same time, directions were given for the regulation of the Indian trade. In short, it was intended to confine the colonies to the sea-coast, and to keep them within the reach of the commerce of the mother country. This is so fully manifested by the reports of the board of trade, upon a petition submitted to it in 1670, of a company wishing to establish a colony upon the Ohio, that a few extracts will not appear out of place.

"The proposition of forming inland colonies in America, is, we humbly conceive, entirely new: it adopts principles in respect to American settlements, different from what have hitherto been the policy of this kingdom, and leads to a system which, if pursued through all its consequences, is, in the present state of that country, of the greatest importance.

And first, with regard to the policy, we take leave to remind your lordships of that principle which was adopted by this Board, and approved and confirmed by his majesty, immediately after the treaty of Paris, viz. the confining the western extent of settlements to such a distance from the sea-coast, as that those settlements should lie *within the reach of the trade and commerce of this kingdom*, upon which the strength and riches of it depend:

* 1st United States' Laws, 446.

and also of the exercise of that authority and jurisdiction which was conceived to be necessary for the preservation of the colonies in a due subordination to, and dependence upon, the mother country, and these we apprehend to have *been two capital objects of his majesty's proclamation* of the 7th of October, 1763, by which his majesty declares it to be his royal will and pleasure to reserve, under his sovereignty, protection and dominion, for the *use* of the Indians, all the lands not included within the three new governments, the limits of which are described therein, as also all the lands and territories lying to the westward of the sources of the river which shall fall into the sea from the west and north-west, and by which all persons are forbid to make any purchase or settlement whatever, or to take possession of any of the lands above reserved, without special license for that purpose.

The same principles of policy in reference to settlements at so great a distance from the sea-coast, as to be out of the reach of all advantageous intercourse with this kingdom, continue to exist in their full force and spirit; and though various propositions for erecting new colonies in the interior parts of America, have been, in consequence of this extension of boundary line, submitted to the consideration of government, (particularly in that part of the country wherein are situated the lands now prayed for, with a view to that object,) yet the danger and disadvantages of complying with such proposals, have been so obvious as to defeat every attempt made for carrying them into execution."

Keeping these maxims of policy in view, and applying them to the alteration in the boundaries of Florida, upon the recommendation of the board of trade, about two months after the date of governor Wright's commission; and the extension of the boundaries of Georgia by that document, to the Mississippi, will, to say the least, appear very problematical.

Shortly after the proclamation of '63, it was found that there were very considerable settlements upon the east bank of the Mississippi, as well as Mobile itself, above the Florida line, and therefore it was proposed by the board of trade,

"That an instrument may pass under the great seal, (in like manner as was directed in the case of the extension of the south,

[*not the west*,] boundary of Georgia,) declaring that the province of West Florida shall be bounded to the north by a line drawn from the mouth of the river Yasous, where it unites with the Mississippi; due east to the river Apalachicola, by which we humbly conceive every material settlement depending upon West Florida, will be comprehended within the limits of that government."*

This instrument was granted; and on the 6th of June 1764, the commission to the governor of Florida, so far as the boundaries of that province were therein prescribed, was revoked, and the boundaries above requested, granted. Why, we may ask, was not the commission to governor Wright, so far as the boundaries of Georgia were diminished, revoked, as well as the commission of the governor of Florida, whose boundaries were enlarged? Why was an allusion made to the manner of the extension of the boundaries of Georgia, without suggesting that these settlements were within that province? Why annex these settlements to Florida, except to conform to the policy adopted at the peace of '63, and thus to confine the colony of Georgia to the eastward of the Appalachian mountains, and to keep the colonists from infringing the Indian boundaries?

This was the intention of the crown in granting those different commissions; and the colonists do not appear to have entertained a different opinion, until Virginia led the way, after the declaration of independence, by asserting her title to the western lands, in her constitution. The following proclamation of general Gage, dated 1772, affords additional proof on this subject.

"Whereas many persons, contrary to the positive orders of the king upon this subject, have undertaken to make settlements beyond the boundaries fixed by the treaties made with the Indian nations, which boundaries ought to serve as a barrier between the whites and the said Indians; and a great number of persons have established themselves, particularly upon the river Ouabache, where they lead a wandering life, without government and without laws, interrupting the free course of trade, destroying the

* 1st Vol. United States' Laws, 450.

game, and causing infinite disturbances in the country, which occasions a considerable injury to the affairs of the king, as well as those of the Indians;

His majesty has been pleased to order, and by these presents orders are given, in the name of the king, to all those who have established themselves on the land, upon the Ouabache, whether at St. Vincent or elsewhere, to quit those countries instantly, and without delay, and to retire at their choice, into some one of the colonies of his majesty, where they will be received and treated as the other subjects of his majesty."*

In this proclamation, a distinction is made between the British colonies and the western country, clearly showing that the general understanding was, that the provinces did comprehend that territory.

If any doubt could exist as to the correctness of this proposition, it must be resolved upon a reference to the celebrated Quebec Act, passed in 1774,† and the proceedings of the colonists thereupon. By this act, and the commission to governor Carleton,‡ all the territory between the western boundaries of Pennsylvania, Ohio, and the Mississippi, was annexed to the province of Quebec or Canada, because, as the preamble set forth, all that territory had been left without any civil government.

This act, it is true, was afterwards enumerated in the declaration of Independence, among the injuries and usurpations on the part of the British crown: not, however, because the boundaries of Quebec were enlarged at the expense of the older provinces; but because, having established by this act, an arbitrary government in that province, the enlargement of its boundaries would render it a fit instrument for introducing the same into the other colonies.

Is it to be believed, that the Continental congress would have omitted to enumerate among the causes of separation, so prominent a cause, as the arbitrary diminution of their

* 1st United States' Laws, 508.

† 2d Remembrancer, Appendix, 38. ‡ Ib. 2.

boundaries, if they had believed themselves to be aggrieved in that point. That they did not regard the extension of Quebec as an encroachment upon their boundaries, is manifest from the following proceedings. In their association, entered into October 20th, 1774, the Quebec act is described as "An act for extending the province of Quebec so as *to border on the western frontiers of these colonies.*"* In their address to the colonists the next day, they say, "the limits of that province are extended, so as to comprehend those vast regions that lie adjoining to the *northerly and westerly boundaries of those colonies.*"† In their address to the king, dated October 26th, 1774, the same description is given to the addition to Quebec:‡ and also in their address, dated July 8th, 1775.§

In these public papers are plainly developed the opinion then prevalent as to the character, propriety, and sovereignty of the north-west territory.

The conclusions to be drawn from the foregoing statements, are important in their bearings upon the proceedings during, and subsequent to, the revolution, and are as follows:

1st. That the European monarchs, when their subjects first undertook the settlement of the sea-coast of this continent, were ignorant of its geography; and gave charters of the most vague and inconsistent character, as to boundaries, to encourage them in that design.

2dly. That the chief end proposed by those colonies was the civilization and conversion of the Indians.

3dly. That the western boundary first assigned in the charters to Virginia, Massachusetts, Connecticut, Carolina, and Georgia, viz. the Pacific, was prescribed, when Great Britain had not the right to grant, according to the European doctrine, the territory to that extent.

* 1st vol. Journal Old Congress, 23, W. and G. Ed. † Ib. 37.
‡ Ib. 47. § Ib. 107.

4thly. That the Virginia grant of 1609, was resumed by the crown; that it was originally given to a corporation in England, which was legally dissolved; that its limits were indefinite, and inconsistent with the rights of other powers, and that if it had not been resumed, it would have been void, so far as it purported to give a claim to the western country.

5thly. That the province of New-York, previous to the revolution, possessed jurisdiction over the country of the Six Nations; and that those tribes claimed a great portion of the western territory.

6thly. That the crown enjoyed, by virtue of its prerogative, the right to alter, extend, and diminish, the chartered limits of any of the provinces subject to the royal government; and that that right was exercised towards the provinces of Virginia, Carolina, and Georgia, after the resumption of their charters, without remonstrance on the part of their inhabitants.

7thly. That the British government and the colonists, before the war of '56 regarded the territory westward of the Appalachian mountains as beyond the western limits of the provinces; that the Illinois country, or that north of the Ohio, was in the possession of the French; that the authority first exercised by the provincial governments over that country, was at the commencement of that war, in consequence of orders from the British ministers, and in the nature of a claim of title; and that it was considered as wrested from France by the arms of the colonists and Great Britain.

8thly. That upon peace being declared, the crown meant so to limit the provinces as to confine them to the sea-coast; and the proclamation of '63 was issued for the purpose of giving them a western boundary, and to reserve the territory beyond that line, to wit, the Appalachian moun-

tains, for the use of the Indians, under the sovereignty of Great Britain.

9thly. That previous to the revolution, and after the colonies had been brought under a systematic government, the management of Indian affairs had belonged to the crown, and its immediate representatives. The New-England colonies indeed had regulated their own Indian relations by means of commissioners appointed for the confederacy of New-England, until the dissolution of their charters. This, however, was owing to their peculiar spirit, and that tone of independence which had prompted them to deny the supremacy of the mother country under Cromwell, and to proclaim their contempt of Charles's authority by the sound of the trumpet. This contumacy existed until the forfeiture of their charters, and their consolidation under Andross. Their joy at their deliverance from that tyranny by the Prince of Orange, induced them to submit to some modification of their government; but previous to that moment, the Indian title to the greater part of the territory east of New-York had been extinguished by conquest or purchase: and the aboriginals had become too insignificant in point of numbers to engage the attention of the royal government. As the charters in those provinces had been given to the colonists, the soil when the Indian title was extinguished, belonged to them, as a body politic. In the other provinces it was vested in the proprietors, or in the crown. Here the savages were more formidable, and the British government, as possessing the power of peace and war, and the treaty making power, assumed the management of the Indian affairs. This power was exercised in different ways. Some of the tribes which were on the point of dissolution, were subjected to the provincial governments. Others, more powerful, bordering on the frontier settlements, but within the acknowledged boundaries of the provinces, were placed under the

special superintendance of the several royal governors. The Six Nations, which then was the most important body of natives, not only from their numbers, but from their tributaries, allies, and the extent of their territory, were under the protection and jurisdiction of New-York; and the other tribes, inhabiting that vast wilderness, west of the Appallachian mountains, were under the superintendance of the British crown; which treated with, and conveyed its intentions to them, through the immediate representatives of the sovereign in America; sometimes through the governors of New-York, Virginia, Carolina, and Georgia; and sometimes through the commander-in-chief of the regular troops.

10thly. That at the commencement of the revolution, the colonies did not claim, as within their provincial limits, any part of the old north-west territory, which had been previously annexed to the province of Quebec by the crown, in the exercise of an unquestioned prerogative.

CHAPTER III.

Formation of the Confederacy.—Adoption of State Constitutions.—Articles of Confederation.—Limits of States.—Western Lands.—Indians.—Obstacles to the Adoption of Articles.—Cessions by States.—Treaty of Peace.—Creeks. State Treaties.—Federal Constitution.—Yazoo Contract.—Agreement of 1802.—*Construction of that Agreement.*

Having in the preceding chapter endeavoured to set forth in a succinct manner the condition of the British provinces, and the nature of the relations subsisting between them, the royal government, and the aboriginals, previous to the American revolution, it is now necessary to direct our attention to that interesting period of our history.

After the conclusion of the war of 1763, the British ministers seem to have adopted a more rigorous and uniform system of government for the North American colonies, than they had before been subjected to. As this ministerial project was regarded by the Americans, (to use the words of the eloquent Burke,) "as a system of perfect uncompensated slavery, in which the restraints of an universal internal and external monopoly were joined with an universal internal and external taxation;" they prepared to resist the designs of the mother country with the spirit of freemen. This determination was not a transient feeling; but a deep, enduring sentiment, pervading the whole mass of society; supplying the place of laws and government, and inducing the colonists to place their persons and fortunes upon the hazard of successful resistance. In order

to concentrate their forces, and to act in their common cause as one people, the leaders of the opposition were invested with power, by the primary assemblies, to represent the different provinces in a continental congress, and to act in their behalf, for the purpose of procuring a remedy for the evils with which they were threatened.

The first meeting of this body was held September 5, 1774; and in that body twelve of the colonies were represented by the consent of the people. In this congress it was determined to adopt such measures of resistance to the designs of Great Britain as did not necessarily imply a hostile disposition. An agreement neither to import nor consume British goods, nor to export produce to Great Britain, was entered into by the delegates for themselves and their constituents, and remonstrance and petition employed to avert the crisis which was manifestly approaching. In these acts, and the pledges which were mutually given, both by the delegates of the several colonies, and by the people in their primary assemblies, is to be seen the germ of the American republic.

The next year, on the ever memorable 19th of April, the inhabitants of Lexington and Concord, in accordance with public sentiment, and (it may be said) the tacit general understanding of the colonists, in resisting the British troops, commenced hostilities, and thus put the respective rights and claims of the two countries upon the arbitration of war.

On the 10th of May, the delegates of the same provinces met again in congress, and formally made the cause of the provincial troops round Boston, the cause of the colonies. They acknowledged it to be their own, and prepared to prosecute it with the same spirit with which it had been commenced. Steps were taken to place the colonies in a state of defence; rules and regulations framed for the government of the troops; measures adopted to expel the enemy from the

continent; a large force assigned for the siege of Boston; bills of credit, to the amount of $2,000,000, issued, and the faith of the twelve colonies pledged for their redemption; negociations commenced with the Indians, to engage their friendship and neutrality; and a resolution passed "prohibiting all intercourse with Georgia, except St. John's parish, (which had then renounced all connexion with the rest of the province,) Canada, Nova Scotia, Newfoundland, the Island of St. John, and East and West Florida, as dependencies of the common enemy, until the further order of congress."

In short, congress assumed, in behalf of the country, the character of an independent nation, to effect certain specified objects; and the colonists ratified their proceedings, and conferred upon that body, by the resolutions passed in their primary assemblies, the powers of national government, so far as they should be required for the accomplishment of the objects proposed. (See Appendix B.) These were, by negociation or force, to bring the mother country to a sense of what was due to the colonies, and to settle the existing difficulties upon a permanent and equitable footing.

About three months after the commencement of hostilities, Georgia acceded to the confederation, and, of course, made herself a party to the proceedings, views, and responsibilities of the other provinces.

In the course of the contest its character changed. The more full developement of the ultimate designs of the British government had convinced the colonists that there could be no safety in any connexion with England, and they resolved upon separation. On the fourth of July, 1776, by an unanimous vote of the continental congress, "these united colonies were declared to be free and independent states," and all political connexion between them and Great Britain to be totally dissolved. This declara-

tion was only a public acknowledgment and justification of the resolution, which had been previously adopted. Nearly two months previous to that period, they had manifested their determination, by recommending to the several provinces to form new civil governments. It would be difficult, among the many acts of resistance to the royal authority, to point out in the proceedings of the leaders of the revolution, the first act by which they first indicated their determination to be a separate nation; but this manifesto gave the most satisfactory evidence of their resolution, and pledged all the colonies to its execution.

By this instrument, and the subsequent proceedings thereon, the American people declared themselves to be an independent nation, then at war with Great Britain; but as such, the whole were responsible to all the world, for the acts of the citizens of each and every of the colonies. They were free and independent, not as isolated states; but as the United States of America; and as such only could they be regarded by mankind.

As between themselves, they were bound together by their acts and their declarations; although the terms and conditions of their union were not properly defined. They comprehended, however, all that was necessary to prosecute the war to a successful result. To this they had pledged themselves; and, however congress might have been disposed to conciliate and to persuade the several states, instead of resorting to coercive measures; no doubt can be entertained, that a refusal to comply with its requisitions upon any of the states for the public service, was a violation of faith, and that a withdrawal from the confederacy by one of its members, would have been a good cause of war, and have justified the invasion and conquest of that state by the rest of the union. The force of circumstances had formed them into a nation, one and indivisible, and instituted a general government, long before the state constitutions, or the articles

of confederation, were framed. As such they were regarded by other civilized nations; and in that character, anterior to the adoption of any federal constitution, or articles of confederation, they had entered into a treaty of commerce and an offensive and defensive alliance with France; and had undertaken, in conjunction with that kingdom, important enterprises, which pre-supposed the existence of a national government, and that that government possessed certain extensive powers over the people of the United States. (Vide Appendix B.)

With Great Britain, they were in a state of war, striving to expel her troops from the continent, and to appropriate for themselves as much of it, as they could gain by force. With this view expeditions were undertaken against the several British posts within the thirteen states, in Canada, the North-West Territory, and St. Augustine in Florida.

As to the other European powers, they were but one people, and known either as the United States of America, or as the insurgent colonies of Great Britain. While among themselves they were communities formerly distinct for all the purposes of local legislation; though subject in some matters, and especially in all matters relating to Indian tribes and their territory, to the legislation of the mother country and the royal authority; but now united by common wrongs and common apprehensions in one cause, and obliged to provide new political institutions to meet the exigencies of their novel situation.

This subject early engaged the attention of the actors in the revolution; and the novel spectacle was presented of a people contending for freedom and independence with a power, whose fleets and armies threatened their extermination, and occupied with arms in their hands in laying the foundations and erecting the superstructure of their political institutions. Since the time when Nehemiah rebuilt Jerusalem, there had not been seen a community, of whom

it could be so emphatically said; "every person with one of his hands wrought in the work, and with the other hand held a weapon."

Although in the first burst of resistance, the place of civil government was supplied by public sentiment, and the powers of the Provincial and Continental Congresses; still, the necessity of adopting a more regular, and better defined political system, was admitted by all. Congress, acting upon this conviction, on the 15th of May, 1776, recommended to the *people* of the several colonies "to adopt such government as should, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and America in general." *

Pursuant to that recommendation, the local conventions proceeded to prepare constitutions for each of the several colonies; and their delegates in the continental congress endeavoured to frame an acceptable system of government for the confederacy, by which the very indefinite powers possessed by that body, might be distinctly marked out, and the respective rights and obligations of the general and local governments properly defined.

The inhabitants of the old British colonies, thus proceeded simultaneously to institute the political system, under which they were to exist as an independent community, united for some purposes, and separated for others. The local governments being more simple in their nature, and less extensive in their operation, were more readily agreed upon, and earlier established; but the intention of forming a national government was so early and so universally adopted, that it may be safely asserted, that the American people never entertained the idea of existing in independent and separate states.

They meant to be one and indivisible; and the only diffi-

* 1st Journal Old Congress, 339, 345.

culty was how to apportion the powers of government, so as to give to congress such powers, as would enable it to represent and protect the national interests, without encroaching upon the state authorities, to whom was confided the care of the local interests. Instead, therefore, of regarding the general government as formed by concessions on the part of the state governments; it is to be considered as equally the establishment of the people, who for the sake of convenience after framing its constitution in a general congress, expressed their assent to its provisions through their local assemblies, and apportioned to each its political powers, by the constitutions provided to guide those, to whose hands the administration of the government was confided.

This apportionment, however, only referred to what then existed, and not to what was subsequently acquired by the thirteen states in their confederated character. For instance, if any thing had been acquired by conquest from Great-Britain as military munitions, or a province not acceding to the union, or uncultivated and unappropriated territory, it is clear that such acquisition would have belonged to the confederacy, and not to the states separately. It would have constituted a common fund, to be appropriated for the prosecution of the war, the reimbursement of the public creditors, or in any other way for the general benefit. What belonged to the colonists, either individually or as provincial communities, was apportioned at the commencement of the revolution among the several governments; but all acquisitions by conquest necessarily fell under the jurisdiction of the national government. As the property of the crown, it became the right of the opponent of the crown; as an acquisition in war, it was vested in that party which carried on the war. This opponent of the crown was the American people, represented in continental congress. The quarrel was theirs, and theirs only, and to them, in their collective capacity, belonged the acquisitions and results of that war.

It was soon, however, foreseen, that in case of success, it would be difficult to define the boundary, between what was conquered from Great Britain, and what had previously belonged to the colonists as distinct communities. This question was intimately connected with another, touching the Indian title to the territory occupied by them and the right of preemption of that title. This right of preemption, according to the English doctrine, belonged to the crown; excepting in the states of Massachusetts, Rhode-Island and Connecticut, where it was vested in the colonists, and in Pennsylvania and Maryland, which were proprietary governments. When the authority of the crown was thrown off, it was natural and proper that those aborigines who were surrounded by the white population, and within the actual jurisdiction of the local legislatures, should be confided to their superintendance. Without any of the attributes of independence; unable to protect themselves from their neighbours, and even from their own passions; and almost on the point of dissolution, as most of the tribes surrounded by the whites soon become, it was humane and necessary, that those who were able, should assume the power and right of protecting and governing them. They could not be regarded as fit subjects for the care of a government instituted for national purposes; but formed a part of the several communities in which they resided, as the gypsies formerly made a part of many of the European states.

On the other hand, those tribes which did not come in contact, with even the frontier settlements of the colonists, as naturally fell within the jurisdiction of the general government. They were independent in fact; under the government of their own chiefs and national councils; and at the formation of our government, so far from claiming any authority over them; great solicitude was manifested, and great pains taken by the public authorities to conciliate them, and to preserve their friendship or neutrality in the impending contest.

Other tribes, almost in contact with the white settlements, without being enveloped by them, could not be so distinctly classed. They were too powerful and too well organised to be ranked with the former as under no government of their own, and still they were so connected with the colonists and the crown by treaties, as to be considered partly dependent.

The same state of things existed as to the western boundaries. With the exception of Maryland, Pennsylvania, Delaware, New-Jersey, and Rhode-Island, the chartered limits of the provinces were very indefinite. So far as the states had any existence independent of the royal charters, they were communities confined to the eastern side of the Appalachian mountains. To the extent of their continuous settlements, and, indeed, to the utmost limits of their usual and actual jurisdiction, no doubt could be entertained as to the right of the several states. As little could exist as to the right of the confederacy to that territory, which had been placed beyond the provincial limits by the crown, and which, consequently, was an acquisition, by war, from Great Britain. It was difficult to define the extent of these respective rights; and this difficulty was increased by the conflicting claims of the different states, as to their own boundaries. Another question was also presented, by the nature of the Indian title, and the doctrine that notwithstanding this title, the ultimate dominion, or right of preemption, belonged to the crown. Within the acknowledged limits of many of the states, the Indians still claimed and occupied large tracts of territory, to which their title had not been extinguished.

Here, again, were conflicting claims. The confederacy contended, that all this was royal property, and therefore became vested in the antagonist of the crown. The states insisted that they possessed the sovereignty over the soil, and that that carried with it the property. These compli-

cated difficulties left no other alternative, than to arrange the matters by compromise and negotiation.

Under these circumstances, the local conventions and provincial congresses proceeded to institute state governments, and the continental congress to frame articles of confederation, for the direction of the general government. Some of the states, as Rhode-Island and Connecticut, being well satisfied with their chartered governments, which were popular, and entirely independent of the crown, began to exist as states, under their old patents, without alteration. The others instituted new governments at different periods, as opportunity offered.

Massachusetts and New Hampshire, "took up government," as they called it, in the early part of the year 1775; and afterwards, when the enemy was expelled from their borders, adopted more regular constitutions.

Massachusetts in 1780, and New Hampshire in 1783.
New Jersey adopted her constitution July 2d, 1776.
Virginia, July 5th, 1776.
Maryland, August 14th, 1776.
Pennsylvania, September 28th, 1776.
North Carolina, December 18th, 1776.
New York, April 20th, 1777.
Georgia, February 5th, 1777.
South Carolina.
Delaware, September 20th, 1776.

In all these constitutions there is a direct reference to the authority of congress. In the constitution of New-Jersey, it is called "the *supreme council* of the American colonies," and in most of the others, the recommendation of that body is spoken of as the motive, which induced the formation of state governments.

Whilst the local conventions were thus engaged, the continental congress was preparing a constitution for the guidance of those, who administered the general government.

In that body, as the supreme council of the nation, the questions above-mentioned naturally became the subjects of discussion.

The regulation of all Indian affairs was, however, thought more peculiarly to belong to congress, and less objection was made to its claim to that prerogative, than in the matter of boundaries.

Even in the provisional government proposed by Dr. Franklin, July 21st, 1775, which was to last only, until an honorable reconciliation could be effected with Great-Britain, there were articles prohibiting any colony from engaging in war with an Indian nation without the consent of congress, and securing to the Indians their lands, and appointing agents to reside among them, and to supply their wants at the general expense. It was also provided, that no private nor colony purchases should be made of the Indians; but that all purchases should be made by congress for the benefit of the united colonies.*

These articles were not adopted, from the conviction, that if an arrangement were speedily made, it would not be necessary to define the powers of the general government; and if not, then, another and more decisive course ought to be taken.

In the mean time congress proceeded to direct and manage our relations with the Indians, as necessarily within the jurisdiction of the national government.

The attention of that body was first directed to this subject by a petition from the inhabitants of the western part of Virginia, June 1st, 1775, intimating their fears of a rupture with the savages, on account of Lord Dunmore's conduct.†

On the 1st of the succeeding month, congress resolved, that if the agents of Great Britain should induce the Indians to attack the Americans, "the colonists ought to avail themselves of an alliance with such Indian nations as will enter

* 1st Secret Journal, 271. † 1st Journal Old Congress, 78.

into the same," to oppose the British troops.* It then proceeded to appoint committees to prepare talks to the several tribes for engaging the continuance of their friendship and neutrality during the contest.*

Three departments were created July 12th, for the regulation of the Indian affairs, and they were authorised "to treat with the different tribes in the name, and on behalf of the united colonies."†

In short, congress assumed the whole power which the crown had hitherto possessed over the Indian relations.

A treaty was made with the Six Nations in 1775.

The beginning of the next year provision was made for the permanent supply of the Indians with goods at the public expense; and all persons were prohibited from trading with them without a license from the Indian commissioners.‡

A few days afterwards, measures were adopted to promote the civilization and conversion of the aboriginals,§ and a resolution was passed prohibiting their employment in the continental armies, "without the formal consent of the national councils of their respective tribes, assembled in their customary mode."‖

In the month of May succeeding, treaties were ordered to be made with the different tribes as soon as possible;"¶ and on the 17th of September, 1778, after the framing of the articles of confederation, but long before their final adoption, a treaty was made with the Delaware nation, by which it was agreed "to invite any other tribes who have been friends to the interests of the United States, to join the present confederation, and to form a state, whereof the Delaware nation shall be the head, and have a representative in congress."††

This convention, made whilst the states were actually

* 1st Journal Old Congress, 83. † Ib. 113. ‡ Ib. 249.
§ Ib. 255. ‖ Ib. 281. ¶ Ib. 241. †† 1st U. S. Laws, 304.

ratifying the articles of confederation, is a contemporaneous construction of its provisions relating to the Indians, deserving particular notice. It shows, that the general government exercised the then unquestioned prerogative, of defining the limits, guarantying the possessions, and establishing the condition of Indian tribes within the undisputed limits of a state; even to the extent of acknowledging their independence, and admitting them into the Union. (See Appendix C.)

This treaty was, it is true, made previous to the final ratification of the articles of confederation; but it was at the moment when that ratification was daily expected, and ten states had already assented to them. Those articles enumerated, among the power of congress that, of "regulating the trade and managing ALL affairs with the Indians not members of any state; provided that the legislative right of any state within its own limits be not infringed or violated."

This very guarded article was adopted after much deliberation, and was finally the result of compromise. In the first draft of the articles of confederation, there was no limitation, or exception to the power of congress. The sentence stood, "managing all affairs with the Indians."*

In the committee of the whole the words "not members of any of the states"† were added, and it was reported in that manner to congress.

In that body a motion was made, October 27, 1777, to strike out this addition, and to insert in its stead "not residing within the limits of any of the United States."

Another motion was made so as to read "managing all affairs relative to peace and war with all Indians not members of any particular state; and regulating the trade with such tribes as are not resident within such limits, wherein a particular state claims, and actually exercises juris-

* Secret Journal, 1st vol. 281. † Ib. 294.

diction."* The next day these proposed amendments were withdrawn, and the one introduced which now appears in the articles of confederation.

Under these circumstances, the treaty with the Delawares was made, and although the states at that time were engaged in the discussion of the articles, and these questions and distinctions were fresh in the public mind, no objection appears to have been made to the right of the general government, to make such a treaty, even then or at the time of their final ratification. Indeed, from the time when these articles were completed in congress, November 15th, 1777, until their ratification, March 1st, 1781, there seems to have been no dispute to the right of the general government, to the management of the Indian relations, and the state governments themselves often applied to congress for directions how to proceed, with regard to such tribes as were within their own limits. The assembly of Pennsylvania sent a committee to congress in May, 1777, for advice concerning the intrusions upon the Indian lands in that state; and congress resolved, (which was the method of legislation by that body,) that measures ought to be taken to quiet the Indians, by assuring them that they should have full satisfaction, by the removal of the intruders, or by compensation for the soil, at their option.†

So, too, when the government of Georgia, in October of that same year, made the same application on account of "the danger of an Indian war, being provoked by *the wantonness and indiscretion of several persons in that state*," congress took the matter into consideration, and authorised the state to take the necessary steps to avert the impending evil.‡

More decisive measures were taken in relation to the In-

* Secret Journal, 1st vol. 323.
† 2d Journal Old Congress, 142. ‡ Ib. 297.

dians residing in the north-west territory; and other questions arose subsequent to the adoption of the articles of confederation; but as these are connected with the question concerning the limits of the provinces, it becomes necessary to recur to the history of that dispute.

In the last chapter, the titles of the several provinces to their boundaries were set forth in detail, and the different principles applicable to their various claims discussed. These claims to territory were not all set up at the commencement of the contest; but were insisted upon, afterwards, when the nature of our government became more fully developed. In instituting the state government generally, no mention was made of the extent of the several states; but they were referred to as they had previously existed when provinces. What their precise boundaries were, has been shown to have been very uncertain. The constitutions, therefore, which were then framed, were regulations for the conduct of the governors, rather than claims of territory—political instruments, and not descriptions of boundaries. Two states, however, departed from this rule, and thereby gave a rise to a question, which retarded the adoption of the articles of confederacy for nearly four years; and, indeed, endangered the existence of the republic.

Virginia, in her constitution, inserted the following provision:

"The territories, contained within the charters, erecting the colonies of Maryland, Pennsylvania, North and South Carolina, are hereby ceded, released, and forever confirmed to the people of these colonies respectively, with all the rights of property, jurisdiction, and government, and all other rights whatsoever, which might, at any time heretofore, have been claimed by Virginia, except the free navigation and use of the rivers Potomaque and Pokomoke, with the property of the Virginia shores and strands, bordering on either of the said rivers, and all improvements which have been, or shall be made thereon. The western and northern extent of Virginia shall, in all other respects, stand,

as fixed by the charter of king James I. in the year one thousand six hundred and nine, and by the public treaty of peace, between the courts of Britain and France, in the year one thousand seven hundred and sixty-three; unless, by act of this legislature, one or more governments be established westward of the Alleghany mountains. And no purchases of lands shall be made of the Indian natives, but on behalf of the public, by authority of the general assembly."

This was a vague assertion of title, and, in that moment of difficulty and distress, was not commented upon, possibly, because it was supposed to be made rather against Great Britain, than against the confederacy.

Shortly after, North-Carolina followed this example, and without noticing the formal cession made in the constitution of Virginia, of the territory within the Carolina grant, set forth her claim in the following manner:

"All the territory, seas, waters and harbours, with their appurtenances, lying between the line above described, and the southern line of the state of Virginia, which begins on the sea-shore, in thirty-six degrees thirty minutes north latitude, and from thence runs west, agreeable to the charter of king Charles, to the late proprietors of Carolina, are the right and property of the people of this state, to be held by them in sovereignty: any partial line, without the consent of the legislature of this state, at any time thereafter directed or laid out, in any wise notwithstanding: *provided always*, that this declaration of right shall not prejudice any nation or nations of Indians, from enjoying such hunting grounds as may have been, or hereafter shall be secured to them, by any former or future legislature of this state:—*And Provided also*, that it shall not be construed so as to prevent the establishment of one or more governments westward of this state, by consent of the legislature.

The other states, whose boundaries were indefinite, viz: Massachusetts, New-York, South Carolina, and Georgia, inserted no description of their limits in their constitutions. In these assertions of territorial rights originated the difficulties, which so long prevented the ratification of the old federal government.

The wise men who framed the articles of confederation,

convinc[siding] the difficulty of then making any satisfactory arrangement, between the confederacy and the several states, as to the dividing lines between their respective territories, concluded to postpone the business to a more convenient season, and to leave all parties in possession of their rights. This resolution was adopted upon the most deliberate conviction that no amicable adjustment could then be made; and after repeated attempts to devise some provision relating thereto, which would be acceptable to all. It was proposed in the original draft of the articles, that congress should have the power to limit and ascertain the boundaries of those colonies, which claimed to the south-sea, to erect the territory into new states. This clause was struck out in the committee of the whole, and though several other efforts were made to settle the boundaries of those states, or to fix upon some mode, by which they might be defined, they all proved abortive,* and the articles were framed without any provision upon the subject.

This omission was intentional; and upon mature consideration, it being fully understood that the rights of neither party were affected by it. Another attempt was afterwards made by the delegates of Maryland, in pursuance of instructions from their constituents, to appoint commissioners to determine this dispute. Upon this final trial, the vote stood as follows, June 23, 1778 :—

Ay.	No.
Rhode-Island,	New-Hampshire,
New-Jersey,	Massachusetts,
Pennsylvania,	Connecticut,
Delaware,	Virginia,
Maryland,	South Carolina,
	Georgia,

New-York, divided.†

* 1st Secret Journal, 312. † Ib. 353.

This equal division upon so important a question, produced a conviction that an amicable adjustment of these claims must be left to another generation.

Notwithstanding this willingness to postpone the settlement of these difficulties to a more favourable moment; no disposition was manifested to yield the rights of the confederacy to any of its members.

In 1779, the government of Virginia, disregarding this determination of the national legislature; but acting in the spirit of the above extract from her constitution, opened an office for the sale of these unappropriated lands. The subject was immediately brought before congress, and the following resolution was introduced, and adopted by all the states then present, except Virginia and North-Carolina, in the negative, New-York divided.* "Whereas the appropriation of vacant lands by the several states, during the continuance of the war, will, in the opinion of congress, be attended with great mischiefs; therefore,

Resolved, that if it be earnestly recommended to the state of Virginia, to reconsider their late act of assembly, for opening their land office; and that it be recommended to the said state, and all other states similarly circumstanced, to forbear settling or issuing warrants for unappropriated lands, or granting the same during the continuance of the present war."

Congress did not confine itself merely to remonstrance; but ordered Col. Broadhead, to be stationed in the western country with a competent force to prevent intrusions upon that territory. In the execution of these orders, that officer in the month of October, 1779, being informed that certain inhabitants of Virginia had crossed the Ohio, and made improvements on the Indian lands, from the river Muskingum to fort McIntosh, and thirty miles up the Ohio, ordered them

* 3d Journal, Old Congress, 385

to be apprehended as trespassers and destroyed their huts.* Information of this was immediately given to the governor of Virginia, and the next year, April 18th, congress resolved, that Colonel Broadhead should be supported in any act or order which the nature of his service had made, or should make necessary.† This assertion of title on the part of Virginia had now attracted the attention of some of the other states, and they insisted on an express stipulation in the articles of confederation, by which they might be effectually secured from these unreasonable claims.

Rhode-Island, New-Jersey, Delaware, and Maryland, in particular, protested against her claims to the western territory, and proposed amendments similar to those offered previously in congress. These amendments were disposed of in the same manner as the former, and the three first states, induced by the pressure of the war, acceded to the confederacy; but Maryland still refused, and, in May 21, 1779, her delegates presented to congress instructions from her legislature refuting the extravagant pretensions of Virginia, and directing them not to sign the articles of confederation, until they were relinquished. (Vide Appendix D.)

Maryland having apparently adopted this resolution with a determination not to recede from it; Virginia authorised her delegates to ratify the articles, although some of the states should refuse to join the confederacy; and Connecticut followed this example. In this manner the Union was brought to the brink of destruction—divided into two parts, by the determination of the most central state not to accede to the articles of confederation, so long as Virginia adhered to this claim; and Virginia pertinaciously insisting upon what she regarded as her rights: whilst the enemies of the country were exulting in the disorganization and distrac-

* 3d Journal Old Congress, 386. † Ib. 449.

tion prevailing in the states, and fondly expecting that the confederacy was on the point of dissolution.

At this critical moment, the state of New-York led the way to the removal of the difficulties, which prevented the ratification of the articles of confederation, by passing an act authorizing her delegates to limit and restrict the boundaries of the western part of the state, in such manner as they should think proper. To this step the people of that state were prompted, solely by a desire "to manifest their regard for their sister states, promote the general interest and security, and, more especially, to accelerate the federal alliance, removing, as far as it depends upon them, the sole impediment to its final accomplishment." The extent and value of this cession thus freely proffered to congress, will appear by a report of a committee, May 1st, 1782, to whom the claims of Virginia were referred.

Virginia, on her part, shortly after the instructions from the Maryland assembly were entered upon the journal of congress, presented a remonstrance of her assembly in behalf of her title, which was referred, together with those instructions and the act of New-York, to a committee of congress, which made the following report to that body, Sept. 6th, 1780:

"That having duly considered the several matters to them submitted, they conceive it unnecessary to examine into the merits or policy of the instructions or declaration of the general assembly of Maryland, or of the remonstrances of the general assembly of Virginia, as they involve questions, the discussion of which was declined on mature deliberation, when the articles of confederation were debated; nor, in the opinion of the committee, can such questions be now revived with any prospect of conciliation; that it appears more advisable to press upon these states which can remove the embarrassments respecting the western country, a liberal surrender of a portion of their territorial claims, since they cannot be preserved entire without endangering the stability of the general confederacy: to remind them how indispensably necessary it is to establish the federal union on a fixed and permanent basis, and on principles acceptable to

all its respective members ; how essential to public credit and confidence, to the support of our army, to the vigour of our councils and success of our measures, to our tranquillity at home, our reputation abroad, to our very existence as a free, sovereign, and independent people ; that they are fully persuaded the wisdom of the respective legislatures will lead them to a full and impartial consideration of a subject so interesting to the United States, and so necessary to the happy establishment of the federal union ; that they are confirmed in these expectations by a view of the before-mentioned act of the legislature of New-York, submitted to their consideration ; that this act is expressly calculated to accelerate the federal alliance, by removing, as far as depends on that state, the impediment arising from the western country, and for that purpose to yield up a portion of territorial claim for the general benefit ; Whereupon,

"*Resolved*, That copies of the several papers referred to the committee be transmitted, with a copy of the report, to the legislatures of the several states, and that it be earnestly recommended to those states, who have claims to the western country, to pass such laws, and give their delegates in Congress such powers, as may effectually remove the only obstacle to a final ratification of the articles of confederation ; and that the legislature of Maryland be earnestly requested to authorize their delegates in Congress to subscribe the said articles."*

On the 10th of October, 1780, this recommendation was reiterated in the following shape :

Resolved, That the unappropriated lands that may be ceded or relinquished to the United States, by any particular state, pursuant to the recommendation of Congress of the 6th day of September last, shall be disposed of for the common benefit of the United States, and be settled and formed into distinct republican states, which shall become members of the federal union, and have the same rights of sovereignty, freedom and independence, as the other states : that each state which shall be so formed shall contain a suitable extent of territory, not less than 100 nor more than 150 miles square, or as near thereto as circumstances will admit ; that the necessary and reasonable expenses which any particular state shall have incurred since the commencement of the present war, in subduing any British posts, or in maintaining forts or garrisons within and for the defence, or in acquiring any part of the territory that may be ceded or relinquished to the United States, shall be reimbursed :

" That the said lands shall be granted or settled at such times

* 1st Secret Journal, 427.

and under such regulations as shall hereafter be agreed on by the United States in Congress assembled, or any nine or more of them."

These recommendations, the urgent remonstrances of the French minister, and the example of New-York, produced the desired effects. The same month Connecticut passed an act of cession; and the 2d of January, 1781, Virginia followed her example. Neither of these acts was satisfactory; but they were, at least, indicative of a conciliatory spirit; and Maryland, on the 2d of February, authorised her delegates to accede to the confederation; but declared, at the same time, that by that accession the state did not relinquish any right which she had with the other states to the back country; and relied upon the several states to do justice in that matter.*

On the 1st of March, 1781, the delegates of that state ratified the articles of confederation; and, on the same day, the delegates of New-York executed a deed of cession to the United States on the part of New-York of all her claims to territory west of a meridian line twenty miles west of the river Niagara, and north of the 45th degree of north latitude.

The general government now commenced its existence under a written constitution, with definite powers over the Indian affairs, and with certain indefinite and unsettled claims to the territory beyond the Apalachian mountains. Before this it had proceeded to act upon those claims, firstly, by vindicating their title against the encroachments of Virginia, and, secondly, by offering bounty lands, August 27th, 1776, to British deserters,† and to the soldiers and officers of the continental army, Sept. 16, 1776.‡

It afterwards declared, upon some misapprehension con-

* 1st Secret Journal, 429.

† 1st Journal Old Congress, 456.

‡ Ib. 479.

cerning this last resolution, that the land was to be provided by the United States, not by the several states.*

The articles of confederation having been completed, the efforts of the states were directed to the expulsion of the British armies, and the question concerning the western territory was laid over, until the month of October, 1781, when the subject was again agitated, in consequence of some proceedings of a committee, to whom had been recommitted the territorial cessions of New-York, Connecticut, and Virginia, and the petitions of the Illinois and Wabash, and Indiana companies. This committee had thought proper to examine into the claims of those companies, and to receive evidence concerning the property and sovereignty of the western territory. The delegates of Virginia refused to submit to any investigation into the title of that state; and, in order to suppress inquiry, made two several motions in congress on the 16th and 26th of October, prohibiting the committee to take cognizance of that subject. Both those motions were supported by the votes of Virginia, North and South Carolina, and Georgia, and negatived by the unanimous vote of the other states.†

This committee, November 3d, 1781, brought in their report, which appears in the journal, May 1st, 1782; and that part referring to the public claims is here inserted.

"Your committee do report, that, having had a meeting with the agents on the part of New-York, Connecticut and Virginia, the agents for New-York and Connecticut laid before your committee their several claims to the lands said to be contained in their several states, together with vouchers to support the same; but the delegates on the part of Virginia declining any elucidation of their claim, either to the lands ceded in the act referred to your committee, or to the lands requested to be guaranteed to the said state by Congress, delivered to your committee the written paper hereto annexed and numbered twenty:

"That your committee have carefully examined all the vouch-

* 1st Journal Old Congress, 533.

† 3d Journal Old Congress, 677, 681.

ers laid before them, and obtained all the information into the state of the lands mentioned in the several cessions aforesaid, and having maturely considered the same, are unanimously of opinion, and do report the following resolutions:

"*Resolved*, That Congress do, in behalf of the United States, accept the cession made by the state of New-York, as contained in the instrument of writing executed for that purpose by the agents of New-York, dated the day of last past, and now among the files of Congress; and that the president do take the proper measures to have the same legally authenticated, and registered in the public records of the state of New-York.

"The reasons that induced your committee to recommend the acceptance of this cession, are,

"1st. It clearly appeared to your committee, that all the lands belonging to the Six Nations of Indians, and their tributaries, have been in due form put under the protection of the crown of England by the said Six Nations, as appendant to the late government of New-York, so far as respects jurisdiction only.

"2d. That the citizens of the said colony of New-York have borne the burthen, both as to blood and treasure, of protecting and supporting the said Six Nations of Indians, and their tributaries, for upwards of 100 years last past, as the dependents and allies of the said government.

"3d. That the crown of England has always considered and treated the country of the said Six Nations, and their tributaries, inhabiting as far as the 45th degree of north latitude, as appendant to the government of New-York.

"4th. That the neighbouring colonies of Massachusetts, Connecticut, Pennsylvania, Maryland, and Virginia, have also, from time to time, by their public acts, recognized and admitted the said Six Nations, and their tributaries, to be appendant to the government of New-York.

"5th. That by Congress accepting this cession, the jurisdiction of the whole western territory belonging to the Six Nations, and their tributaries, will be vested in the United States, greatly to the advantage of the union.

"*Resolved*, That Congress do earnestly recommend to the states of Massachusetts and Connecticut, that they do without delay release to the United States in Congress assembled, all claims and pretensions of claim to the said western territory, without any conditions or restrictions whatever.

"*Resolved*, That Congress cannot, consistent with the interests of the United States, the duty they owe to their constituents, or the rights necessarily vested in them as the sovereign power of the United States, accept of the cession proposed to be made by the state of Virginia, or guarantee the tract of

country claimed by them in their act of cession referred to your committee.

"REASONS.

"1st. It appeared to your committee from the vouchers laid before them, that all the lands ceded or pretended to be ceded to the United States by the state of Virginia, are within the claims of the states of Massachusetts, Connecticut, and New-York, being part of the lands belonging to the said Six Nations of Indians and their tributaries.

"2d. It appeared that great part of the lands claimed by the state of Virginia, and requested to be guaranteed to them by Congress, is also within the claim of the state of New-York, being also a part of the country of the said Six Nations and their tributaries.

"3d. It also appeared that a large part of the lands last aforesaid are to the westward of the west boundary line of the late colony of Virginia, as established by the king of Great Britain, in council, previous to the present revolution.

"4th. It appeared that a large tract of said lands hath been legally and equitably sold and conveyed away under the government of Great Britain, before the declaration of independence, by persons claiming the absolute property thereof.

"5th. It appeared that in the year 1763, a very large part thereof was separated and appointed for a distinct government and colony by the king of Great Britain, with the knowledge and approbation of the government of Virginia.

"6th. The conditions annexed to the said cession are incompatible with the honour, interests, and peace of the United States, and therefore, in the opinion of your committee, altogether inadmissible.

"*Resolved*, That it be earnestly recommended to the state of Virginia, as they value the peace, welfare and increase of the United States, that they re-consider their said act of cession, and by a proper act for that purpose, cede to the United States all claims and pretensions of claim to the lands and country beyond a reasonable western boundary, consistent with their former acts while a colony under the power of Great Britain, and agreeable to their just rights of soil and jurisdiction at the commencement of the present war, and that free from any conditions and restrictions whatever."*

Several motions were afterwards made on this subject; but no further advance was made towards an adjustment of the difficulty, until the 25th September, 1782, when the

* 4th Journal Old Congress, 21.

following resolutions were again passed by the unanimous vote of all the delegates in congress, except those from Virginia, Georgia, and North and South Carolina.

"1st. That if the several states claiming the exclusive property of the western lands, would make cessions to the United States, agreeable to the recommendation of Congress of the 6th day of September, 1780, and the resolutions of Congress of the 10th of October, 1780, it would be an important fund for the discharge of the national debt.

"2d. That therefore, it be recommended to those states which have made no cessions, to take the above recommendation and resolutions into consideration as soon as possible, and determine thereon.

"3d. That it be recommended to those states which have made cessions not entirely agreeable to the above recommendation and resolutions, to re-consider the same, and send the result to the United States in Congress assembled."*

These recommendations were reiterated on the 18th April, 1778, in certain resolutions relative to the extinguishment of the public debt, and on the 4th of the succeeding June, the Virginia cession was again referred to a committee, to report upon the proposed cession, without deciding upon the title of the state.† This reference excited the alarm of the New-Jersey legislature, and a remonstrance was forwarded by that body to congress within ten days after that reference, expressing their hopes that the cession of Virginia might not be accepted,‡ unless it was more liberal.

The committee to whom the reference had been made, consisting of Messrs. Rutledge, Ellsworth, Bedford, Gorham, and Madison, men ranking among the ablest and most judicious members of congress, made a report, reciting the conditions of the Virginia cession, viz:

1st. That the territory north-west of the Ohio, which was the tract ceded, should be laid out into republican states of certain specified dimensions, which were to be

* 4th Journal Old Congress, 82. † Ib. 227, 231. ‡ Ib.

admitted into the Union, with the same rights as the other states.

2d. That Virginia should be reimbursed by the United States her expenses in reducing the British posts, and all other expenses incurred on account of the north-west territory during the war.

3d. That the inhabitants of Kaskakies, St. Vincent, and the vicinity, should be secured in their possessions, and protected by the United States.

4th. That one hundred and fifty thousand acres in such part of the north-west territory as the officers should select, should be granted to the soldiers and officers engaged in the expedition under colonel Clarke, against the British post in that country.

5th. That certain bounty lands promised to the Virginia troops in the continental service, which were to be located in the north-west territory, in case of any deficiency in the quarter to which they were first to resort, should be granted to them in the event of that contingency.

6th. That all the remaining territory, not disposed of in bounties to the American army, should be considered a common fund, for all such states as had, or might, become members of the union.

7th. That all Indian purchases, which had been, or should be, made for the use of private persons, and all royal grants inconsistent with "the chartered rights, laws, and customs of Virginia," should be declared void.

8th. That all the territory south-east of the Ohio, included between the boundaries of Pennsylvania, Maryland, and North Carolina, to the Atlantic, should be guaranteed to Virginia by the United States.

The first condition the committee decided to have been provided for by the act of congress, October 10th, 1780.

The second condition was also considered to have been provided for in the same act; but, in order to adjust the ac-

count of such necessary and reasonable expenses as came within its true intent and meaning, it was agreed to appoint three commissioners for that purpose. The settlers described in the third condition, the committee thought, ought to be protected in their possessions, rights, and liberties.

It recommended that congress should agree to the fourth, fifth, and sixth conditions, and deemed it improper to declare the purchases void, as required by the seventh condition.

The report of the committee upon the eighth condition, is as follows:

"As to the last condition, your committee are of opinion, that congress cannot agree to guarantee to the commonwealth of Virginia, the land described in the said condition, without entering into a discussion of the right of the state of Virginia to the said land; and that, by the acts of congress, it appears to have been their intention, which the committee cannot but approve, to avoid all discussion of the territorial rights of individual states, and only to recommend and accept a cession of their claims, whatsoever they might be, to vacant territory. Your committee conceive this condition of a guarantee, to be either unnecessary or unreasonable; inasmuch as, if the land above-mentioned is really the property of the state of Virginia, it is sufficiently secured by the confederation; and if it is not the property of that state, there is no reason or consideration for such guarantee."

The committee concluded by recommending that if Virginia should make a cession conformable to their report, congress should accept it.

This report was agreed to by all the states except New-Hampshire, New-Jersey, and Maryland; and the legislature of Virginia passed an act accepting of the terms of compromise offered therein, and authorised their delegates to prepare a deed of cession accordingly. This was done, and on the first of March, 1784, the state of Virginia ceded its title to the north-west territory to the United States, upon the terms prescribed in the report of September 13th 1783.

Whilst this compromise was going on with Virginia, the United States were negotiating the terms of peace with Great Britain. Among the unsettled questions between these contending powers, the boundary line between their respective possessions, formed an important item of discussion. The commissioners of the United States at Paris, were of course instructed to maintain the title of this republic to as large a tract of territory as they could obtain. Great Britain, on her part, contested this title ; but the arms of the allies had then obtained the ascendancy, and she was compelled to yield to most of their demands.

In establishing the title of the United States, all the different rights which any of the states conceived they had acquired under the royal charters, by legislative acts, Indian purchases, occupation of the colonists, expenditure of blood and treasure in reclaiming and maintaining the country, and reducing the British posts, were brought forward, and strongly insisted upon. The negociators, however, conceived themselves justified in departing from the boundary line prescribed by congress, which originally took in a large part of Canada, south of the 45th degree of north latitude,* as part of the States of New-York, and Massachusetts. The line which was finally agreed upon in the provisional treaty, of November 30th, 1782, ran up the river St. Lawrence, beginning at the point where it was intersected by the forty-fifth degree, into Lake Ontario, and up the usual water communications through Lake Erie, Huron, Superior, Long Lake, Lake of the Woods, to the northwest point thereof; and thence due west to the river Mississippi, down said river to the thirty-first degree of north latitude, and thence along the boundary of the Floridas, as prescribed in the proclamation of '63. By this line, a large portion of territory comprehended within the terms of the charter of Massachusetts, and clearly within the province

* Vide 2d Secret Journal, 226.

of New-York, before the passage of the Quebec act, was left out of the limits of the United States. Another fact connected with this boundary, deserves to be mentioned, not only from the singular character of the transaction, but because it bears directly upon the question, which afterwards arose between Georgia and the United States.

By a separate and secret article, which there is good reason to believe, was attached to this provisional treaty, it was agreed, that, in case Great Britain should succeed in retaining the Floridas, the southern boundary of the United States should be limited by the northern boundary of those provinces as set forth in the recommendation of the board of trade, dated March 23d, 1764, viz: by a line running due east from the mouth of the Yazoo river, to the river Apalachicola; but if she should be compelled to cede them to Spain, then it was to run as described in the treaty.* By this arrangement, the sovereignty of the territory between the 31st degree, and 32, 30, north lat. was to depend upon the contingency of the cession of the Floridas, and, as they were ceded to Spain, it was added to the United States. The boundary line in the treaty of 1782, was afterwards confirmed by the treaty of peace, of '83, and the title of Great Britain to all the territory within these limits transferred to the United States, in their confederated character.

On the 29th of April, 1784, the states which had not ceded their claims to the western country, were again urged by congress to make the necessary cessions, for the purpose of relieving the public burthens. The question as to the character of those claims again recurred, and all the states, except Virginia and North and South Carolina, were unanimous in characterising them merely as claims. One delegate from Virginia, the venerable author of the declaration of independence, concurred in this vote.†

* 4th Secret Journal, 300. † 4th Journal Old Congress, 391.

Georgia and Delaware were not present at the passage of this resolution.

The legislature of Massachusetts, in conformity to this recommendation, November 13th, 1784, authorised her delegates to cede the title of that state, to all territory west of the western boundary of New-York, to the United States, without condition.*

Her delegates accordingly proceeded to execute their trust, and with a patriotic foresight, which will forever redound to his honor, one of them, Mr. Rufus King, introduced, March 16th, 1785, a resolution, by which the prohibition of slavery was made a fundamental article of compact between the United States and the north-western states, and afterwards they executed the deed of cession, conveying the claim of Massachusetts to the confederacy.† The decision of the resolution respecting slavery was similar to the other votes upon the cession of territory. Virginia, Georgia, North and South Carolina, in the negative, and the other states in the affirmative.‡

The only claim to the north-west territory, not then ceded to the United States, was that on the part of Connecticut; and this, although strongly insisted upon by that state, was never regarded as a title entitled to much consideration. The western boundary of Connecticut had been so clearly defined in her agreement with New-York, that all her claim beyond that state was supported upon very untenable grounds. Still, however, it was the claim of a state, and as such, the national government felt desirous of extinguishing it. In the month of May, 1786, the Connecticut legislature authorised her delegates to cede to the United States, all her right to the lands lying west of a meridian line, 120 miles west of the western boundary of Pennsylvania. As it was at first thought, that by accepting this

* 4th Journal Old Congress, 500. † Ib. ‡ Ib. 481.

partial cession, the title of Connecticut to the part not ceded, would be admitted, congress refused to accept it; but afterwards it consented by the votes of all the states, excepting Maryland, to accept the cession.* A deed of cession was accordingly executed, September 13th, 1786, and the claims of all the states to the north-west territory extinguished, excepting to the tract called the Connecticut reservation.

This tract was speedily settled by emigrants from that state, claiming under its grants; and the general government, finding a great number of settlers in possession of the land, with that regard for the harmony of the country which has invariably characterized its proceedings, offered, by an act of congress, passed April 28th, 1800, to issue letters patent granting the property in the soil to the governor of Connecticut, in trust for the grantees of that state, provided she relinquished her claims of jurisdiction within eight months.† This offer was accepted, and the question as to the property and sovereignty of the north-western territory finally settled.

The settlement of the right to the south-western territory beyond the Apalachian mountains was attended with greater difficulties: as the subject was not only more complicated in itself; but was rendered still more so by the subsequent proceedings of the legislature of Georgia.

This territory was occupied by large and powerful tribes of Indians, completely independent; among which the Creeks, Chickasaws, Cherokees, and Choctaws, were particularly distinguished. These savage nations extended over a large tract of country, which they occupied for hunting grounds, without any definite boundaries; and in many instances, their claims interfered with each other—two or more tribes claiming the same territory.

* 4th Journal Old Congress, 648. † 3d U. S. Laws, 364.

To the greater part of this tract the United States and Spain both laid claim; and, in fact, to the ultimate dominion of certain, but of different portions, each had a right. The boundary line between their possessions ran through this Indian territory, and a serious dispute arose as to where this line should be fixed.

Spain claimed, as part of West Florida, all south of the east line from the mouth of the Yazoo river, and as part of Louisiana, a large tract of country east of the Mississippi, the boundary of which was to be ascertained by negociation.

The United States resisted this claim, and insisted upon the boundary prescribed by the treaty of 1783. In order to strengthen her title, Spain concluded treaties, in June, 1784, with the Chickasaw, Choctaw, and Creek nations, by which the former acknowledged the Spanish title, to the territory within the boundary claimed by that power, and promised to support it in its right thereto. Alexander M'Gillivray, the principal chief, acting in behalf of the Talapuches, Seminoles, Alibamas, Cahuitas or Cowetas, and other tribes, composing the greater part of the Creek nation, entered into a treaty at the same time with the representatives of the king of Spain, by which the Creeks acknowledged themselves to be his subjects and vassals; promised to obey his orders and laws, and to live in peace with the other Indians, "for the purpose of promoting commerce and agriculture."* By this treaty they were guaranteed in their landed possessions by the Spanish crown; and other lands were promised them in case of their violent expulsion by their enemies.

The treaty-making power in these tribes, as in most other Indian nations, was vested in the principal men. No particular number was necessary to make a treaty; inas-

* 10th State Papers, 225.

much as its binding force upon the Indian tribes, in some measure, depended upon the influence of those who supported it. If their power in the nation was greater than that of the dissenting party, its provisions were complied with. But if its conditions were unacceptable to the majority of the nation, the making a treaty often produced a war, either among the Indians or with the whites. In general, however, the aborigines conformed to their agreements, and almost always, when made by a national council properly called. Among the Creeks this national council was composed of the principal chiefs or representatives of the tribes, and even of towns. Their government, similar to that of all barbarous tribes, was of undefined powers. Formerly it was in the nature of a confederacy between tribes, nearly equal, and owning hunting grounds, to some of which particular tribes were acknowledged to have a separate title; while the title of the nation in its confederate character covered the rest.

During and subsequent to the American revolution, however, they assumed more of a national character; and, as a distinct people, entered into treaties with the two powers which claimed the right of preemption of their territory. Mc Gillivray, as their head chieftain, possessed the greatest influence with the tribes, and to him chiefly, they confided the management of their foreign relations; and by his influence they were guided in their choice of foreign alliances. It was by him that the treaty with Spain was made in 1784.

The year before the conclusion of that treaty, the state of Georgia, which, during the war, had made no claim nor pretension to the western lands; but as an exposed and frontier state, had submitted its fate, and its limits, to the discretion and generosity of congress, set up a claim to the territory which now forms the states of Mississippi and Alabama.

The war with Great Britain, after the capture of Cornwallis, became merely an effort on the part of our opponent, to retain, as colonies, the two southernmost states.

Georgia, being the weakest and most exposed, was constantly soliciting assistance from congress, and it was liberally afforded. She was excused from paying her quota for the common defence. Money was advanced to her at divers times; and congress unanimously resolved not to consent to a peace, until the independence of Georgia and South-Carolina was acknowledged. After the provisional treaty of peace had been made, and the limits of the United States defined, viz. February 17th, 1783, the legislature of Georgia passed an act, claiming all the territory south and west of the South-Carolina boundary, and opening a land office.

This was the commencement of the contest with Georgia, as to the powers of the confederacy, and the ground then taken by the authorities of that state, as to its peculiar privileges, was not only destructive to the rights of the union, but also to the rights of the several states.

In the month of May succeeding this declaration of her boundaries, her executive proceeded to enter into treaties with certain Creek and Cherokee chiefs, defining the line between the Indian lands and the white settlements. Two years afterwards, November 12th, 1785, these chiefs, with some others, undertook to agree to the treaty of Galphinton, by which they acknowledged, in the first article, "that the said Indians, for themselves and all the tribes or towns within their respective nations, within the limits of the state of Georgia, have been, and now are, members of the same, since the day and date of the constitution of that state."*

Whether this provision was intended as an offset to the treaty concluded the year before, by Mc Gillivray, with

* Digest of Georgia Laws, 607.

Spain, we cannot tell; but certain it is, that the treaty of Galphinton gave great dissatisfaction to the Creek nation, and brought on hostilities between them and the people of Georgia. The next year, the state authorities attempted to settle these difficulties, by a treaty concluded at Shoulderbone,* with a portion of the Creeks; but as the boundary defined in the Galphinton treaty, by which certain lands near the Oconne were ceded to the whites, was still adhered to, the discontent of the Indians was not diminished. All these proceedings of the state authorities were, according to their own peculiar construction of their state rights, but contrary to the spirit of the confederacy, and the unquestionable prerogative of the general government. Even supposing that the right of Georgia to the territory occupied by the Creeks had been undisputed, still it would have been only acting conformably to the example of many older and more powerful states, to have applied to congress for its concurrence and co-operation in the contemplated treaties. The application of Pennsylvania, in 1783,† relative to a treaty to be formed with the Indians inhabiting the back part of that state, afforded a precedent, which might have been adopted without detracting from the dignity or patriotism of her younger sister, if her limits had been defined, and her rights indisputable. But they were not.

The state of South-Carolina claimed all the territory south and west of a line drawn from the head of St. Mary; to the head of the Alatamaha, and thence west to the Mississippi, as within her chartered limits.

To all the land west of the Appalachian mountains, the United States laid claim, as beyond the western boundary of the British provinces, and consequently a conquest from Great Britain by the common efforts, and expenditures of all the members of the Union. This claim was sustained

* Digest of Georgia Laws, 607. † 4th Journal Old Congress, 274.

upon the same principles, as the right of the Union to the north-west territory. Congress showed too, that when the Georgia charter was given, this territory was occupied by the French, who held forts extending from Mobile bay, nearly to the northern boundary, described in that charter; and appealed to maps, to prove that Georgia did not extend beyond the mountains. The proclamation of '63, after its cession by the French, and the decisions of the Boards of trade, as well as the total absence of all legislative proceedings on the part of the state, until after the provisional treaty with Great Britain, were also relied upon to disprove the claim of Georgia.

To another part of this territory, viz: to that south of the parrallel of latitude, from the mouth of the Yazoo river to the Apalachicola, the United States asserted their right, as a cession of a portion of West-Florida. It had been annexed to that province, pursuant to the recommendation of the board of trade, after the last extension of the limits of Georgia, and by virtue of that royal prerogative, which had augmented the boundaries of that state. It had afterwards been comprehended in a secret article attached to the treaty with Great Britain, by which its cession to the United States depended upon the contingency of the cession of the rest of Florida to Spain. This contingency happened, and as part of Florida, its cession to the United States became complete.

Under these circumstances, the formation of these treaties with independent tribes of Indians, was an interference by Georgia, with the prerogative of the national government, destructive to all its rights, and to all distinction between internal and external relations. It was so regarded by congress at the time; but that body, with its customary discretion, sought to avoid any direct collision with the state governments, by pressing upon them a compliance

with the resolutions recommending cessions of their claims to the western territory.

The legislature of North-Carolina, on the 2d of June, 1784, had passed an act of cession of the western territory with certain conditions, which gave to the United States a right to accept the same within a year. Before the expiration however of the year, it repealed that act, and it was proposed in congress to accept the cession made by the first act, notwithstanding the repeal.* A disposition to obtain the rights of the Union by persuasion, rather than by coercion, still predominated, and congress contented itself with recommending to North-Carolina to follow the examples of New-York, Virginia, and Massachusetts, in relation to the territory ceded by their act of June 2d, 1784.†

The legislature, however, did not comply with this recommendation, and no cession was obtained from that state, until after her accession to the federal constitution, in 1789.

South-Carolina, in 1785, made a cession of its claim to a small strip of land west of Tugaloo river. This cession, however, was of but little importance, and is merely enumerated to preserve the chronological order of these acts. The same year she ceded to Georgia the residue of her claims to the western territory. Georgia took, as yet no steps for the extinguishment of her pretentions; but adhering to her claims, according to her own statutes and treaties, produced disturbances on the part of the southern tribes, to such a degree, as to expose the country to a general Indian war. In this crisis, congress was applied to, to interfere with the power of the nation, to repress the Indians, who then were in a state of great excitement.

The whole business was referred to a committee, which, August 3d, 1787, brought in a report censuring the conduct

* 4th Journal Old Congress, 523. † Ib. 525.

of Georgia, with regard to the Creeks; imputing the disturbances to unjust encroachments on the part of the whites; maintaining the right of congress to control those subjects, and resolving that Georgia be informed that congress would not employ the power of the Union to sustain a cause, of the justice of which they were not convinced; nor interfere in behalf of a state against an independent tribe, unless congress should have the sole direction of the war, and the right to regulate the terms of peace. (Vide Appendix E.)

On the 20th of the succeeding October, congress again urged upon the states of North-Carolina and Georgia, "*to justify that confidence which had been placed in them*,"* by making cessions similar to those made by the other states. This guarded expression fully showed the opinion then entertained of the propriety of those claims, and probably, nothing but the comity with which congress felt disposed to treat the members of the confederacy, prevented that body from taking some decisive steps for the ascertainment of its rights. The same tone is to be seen in a resolution passed the year before, recommending similar cessions to the same states, together with South-Carolina.†

Those states are there "once more solicited to consider with candour and liberality, the *expectations* of their sister states," and to comply with the *reasonable* proposition of the 6th of September, 1780.

Nothing, however, was done, by either Georgia or North-Carolina, towards the adjustment of these difficulties, until after the framing of the federal constitution, and its ratification by the state of Georgia, January 2d, 1788.

By this instrument, the states were prohibited from entering "into any treaty or alliance;" but the treaty-making power was confided exclusively to the general government. This grant of power comprehended all agreements with the Indians; and in another part of the constitution congress

* 4th vol. Journal Old Congress, 800. † Ib. 680.

was authorised to regulate commerce with the Indian tribes. These two clauses were intended as an equivalent to the provision in the articles of confederation; by which congress was invested with the power "to regulate the trade and to manage all affairs with the Indians, not members of any state; provided that the legislative right of any state within its own limits, be not infringed or violated." All our intercourse with the Indians, so long as they continued to be independent, was in the way of trade, or in making treaties, and these were placed under the control of the general government. It was not contemplated, under either system, that congress should have any legislative power over the Indians; but that it should have the exclusive power to regulate the trade, and to make treaties with them. So long, therefore, as they were independent, and proper parties to treat with, congress was invested with the power to manage our relations with them; but when they lost that character, and became members of a state, they fell under the power of the local government, and congress, from that moment, ceased to interfere with them. In the old articles of confederation, there was ground for dispute; because the prohibition of making treaties, by a member of the union, was expressed thus—"with any king, prince, or state;" but, in the federal constitution, as congress is solely invested with the treaty-making power, and that of regulating commerce with the Indians, the instant an Indian tribe loses its distinct and independent character, congress ceases to have any pretence to interfere with it: and it becomes the subject of local legislation.

Several attempts were also made in the convention, which framed the federal constitution, to provide some method of determining upon the claims of the United States, and the several states, to vacant territory;* but as a sufficient number of impediments already existed, to the formation of a

* Journal of the Federal Convention, 309.

national government, it was finally concluded to leave the subject as they found it; reserving to all parties their respective rights. A provision was accordingly inserted, giving power to congress "to make all needful regulations respecting the territory of the United States;" and it was declared, that "nothing in this constitution should be construed so as to prejudice any claims of the United States, or of any particular state."

After the state of Georgia had agreed to the constitution, the legislature passed an act ceding part of the claim of the state, to the United States, upon certain conditions. This act was passed February 1st, 1788. The part to which the claim was ceded, was a tract of one hundred and forty miles wide, extending from the Apalachicola to the Mississippi. As the southern boundary of the part ceded was the thirty-first degree, it consequently comprehended all that tract to which the United States had already an unquestionable claim, as part of West-Florida, being about one hundred miles in width, and of equal length to the whole tract purporting to be ceded. For this incomplete and inconsiderable cession, Georgia demanded that the United States should guarantee to that state, all the remaining territory claimed by her; and that the sum of $171,428, which had been spent by the state, in the management of her Indian relations, should be allowed as a charge against the United States, and admitted in payment of a specie requisition upon the states, by congress. Other conditions were inserted, respecting a republican government for the said territory, the free navigation of its rivers, and the allowance of such expenses as the state might be put to in her defence. These conditions were all unnecessary; having been already provided for by congress.

This act of cession was referred to a committee, which brought in, July 15th, 1788, a report, declining to accept

the cession: 1st, because a large tract of country extending to the Mississippi, was retained by Georgia, which would diminish the value of the tract in question. 2dly, because the demand of the specie allowance was unjust, especially as the state was already a debtor to a large amount loaned. 3dly, because congress had invariably refused to guarantee territorial rights to any member of the confederacy.*

Under these circumstances, the federal constitution went into operation with the assent of eleven states. Rhode-Island and North-Carolina, refusing to ratify it, and in consequence of that refusal were placed, in their commercial intercourse, with the rest of the union, upon the same footing, in some respects, with foreign powers.†

North-Carolina, very shortly after the passage of these laws, viz. 21st November, 1789, ratified the Federal Constitution, and a few days afterwards her legislature passed an act, ceding to the United States all the claim of the state to the western territory beyond her present boundary, upon condition‡ that the land ceded, and its inhabitants, should not be enumerated in ascertaining the quota of the state to the public debt, but that they should be made liable for their own proportion thereof, and also for their proportion of the arrears of North-Carolina—that the lands promised to the soldiers of the North-Carolina line by the legislature, and all land entries or grants legally made under the land laws of the state, should be made good, as if no cession had been made—that the cession be accepted by congress within 18 months—that the lands of non-residents should not be taxed higher than those of residents—that the people residing between the Tenessee and Big Pidgeon, should be permitted to enter their pre-emptions, provided an office were authorised by the state

* 4th Journal Old Congress. † 2d United States' Laws. 31. 52.

‡ 2d U. States' Laws, 86.

—It was also prescribed that the lands should be considered a common fund, and be governed as the north-west territory, with the single exception that slaves should not be emancipated. The senators of the state, February 25, 1790, executed a deed of cession upon those conditions, which was accepted by congress, and the right of North-Carolina, whatever it was, became thus vested in the United States.

Whilst the general government was engaged in making this compromise with North-Carolina, the state of the relations with the Creek Indians also received its earnest attention. Commissioners on the part of the United States were appointed by president Washington to inquire into the causes of the Indian disturbances. These commissioners performed their duty, and made their report upon the whole matter, together with their opinion, that the treaties of Georgia with the Creeks, (which then were generally reported to have been fraudulently made,) were, for aught they could discover, made "with as much substantial form, and apparent good faith and understanding of the business, as Indian treaties have usually been conducted, or perhaps can be, where one of the contracting parties is destitute of the benefits of enlightened society."

In making this report, the commissioners did not perhaps advert to the fact, that in agreements between parties of this description, the fairness of the bargain depends, rather upon the disposition of the party enlightened by civilization to do justice, than upon "*substantial form and apparent good faith.*"

However, this may be, certain it is, that General Washington ordered another treaty to be made with the Creeks, and a treaty was accordingly made at New-York, August 7th, 1790,* with the representatives of the Creek nation, and

* 1st United States' Laws, 359.

among others, McGillivray, by General Knox, the then secretary of war. In this treaty, a boundary line between the Creeks and white settlements was agreed to, not altogether in conformity with the line prescribed in the treaty of Galphington ; but as much so as the Creeks would consent to, and the United States promised to guarantee to the Creeks, their lands according to the defined boundaries, and to promote their civilization, by furnishing them with domestic animals and agricultural implements. The Creeks within the limits of the United States, on their part acknowledged themselves to be under the protection of the United States, and stipulated not to hold any treaty with any *individual state*, or with any individuals of any state. They also disclaimed the protection of all other sovereigns.

This treaty was censured by the legislature of Georgia, in resolutions passed November 26th, 1790, and a portion of the citizens of that state undertook to disregard it, and entered the Indian territory with an armed force.

This conduct was afterwards justified by a jury of that state, upon the ground that the treaty of New-York was unconstitutional, being a violation of state rights. Its results were however, highly injurious to the public interests. The Creeks, already, strongly inclined to a Spanish alliance, were provoked by this violation of a treaty just concluded : and in that state of excitement, they were persuaded by an adventurer named Bowles, and a Spanish agent called Olivar, to disown the treaty of New-York, and to enter into hostilities with the frontier settlers of Georgia. In this, they were secretly supported by the Spanish authorities in the neighbouring provinces, who supplied them with arms and munitions of war, This course of conduct was adopted in the expectation, that finding it difficult to quiet savages, the United States would be less unwilling, to admit the pretensions of Spain to the greater part of the territory occupied by them. As a mediator between

us and the Creeks, she hoped to be able to circumscribe our southern boundary.

In this attempt she was defeated. The executive of the United States, would not depart from the boundary prescribed by the treaty of peace with Great Britain; and after a long and tedious negociation, in which our minister was finally compelled to demand his passports, Spain acceded to a treaty, October 27th, 1795, recognizing the boundaries of the United States, and both parties mutually agreed not to enter into treaties with the Indians, not residing in their respective possessions.

After the conclusion of this treaty, the pacification of the Indians was easily affected. In 1796, June 20th, a treaty was concluded with the Creeks at Coleraine,* confirming the treaty of New-York; providing for running the boundary line, and for furnishing the Creek with blacksmiths as pioneers of civilization. Congress the same year passed, a statute declaring the boundary line between the United States and the Indian tribes, according to the different treaties, and prohibiting any encroachment or entry upon their lands without a passport. By these treaties, the question between the United States and Georgia, as to the western territory, was much simplified; and the rights of each could have been easily ascertained by parties mutually inclined to an amicable settlement; if the legislature of Georgia had not again involved the business in difficulty by consenting to the celebrated Yazoo contract,

In the year 1795, the legislature of that state, corrupted by certain land speculators, conveyed to four companies the greater part of the territory in dispute between Georgia and the United States.

To the Georgia Mississippi Company, it conveyed most of the territory west of Tombeckbe river, comprehended

* 1st United States' Laws, 363.

in the secret article of the provisional treaty of '82, and ceded to the United States as part of West-Florida. This tract was 200 miles long and about 82 miles broad, being about one-fourth of the present state of Mississippi. To the Georgia company it conveyed another portion of the ceded part of Florida, and a large tract above the limits of that province, being a parallelogram 300 miles long and about 100 miles wide, besides a triangle 50 miles in length at the base, and 100 miles from the base to the opposite angle. To the Tennessee and to the Upper Mississippi companies were ceded two tracts—one about 150 miles long and 50 miles wide; the other about 125 miles long and 25 in width, being about two-thirds of all the country claimed by Georgia under the charter of 1732, beyond her present limits.

Altogether the cessions to the Yazoo purchasers, as they were called, comprehended 35,000,000 acres of land, about four-fifths of all the western territory to which that state laid any claim. It should be recollected, that to all this territory the United States also laid claim; and to one tract about 100 miles wide and 360 miles in length, their title was incontrovertible, and yet this territory the legislature of Georgia undertook to convey to individuals.

It is true that no doubt could exist of the corruptness of that legislature, but still it had, in the exercise of its constitutional powers, conveyed away the title of the state. This legislature was chosen too, by the people of Georgia, when it was generally known that an application would be made to that body, to dispose of the western lands, and the inducements for the sale were spread before the voters at the time of the election.

Directly after the passage of this act, the prime movers in the business, in order to prevent its repeal and to engage an extensive interest in its support, began to sell shares in the companies, to bona fide purchasers in different parts of

the union, before the manner in which the contract had been obtained became generally known. In Georgia, however, great excitement prevailed. The members who had opposed the passage of the law, upon their return to their constituents, informed them of the corruption that prevailed in the legislature, and universal indignation was manifested at their treachery. Some of the delinquents were put to death, and others fled from the state to avoid the popular rage. The next legislature declared the contract void, and in 1798 a new state constitution was framed, in which a declaration of boundaries was inserted, claiming, in behalf of the state, all the territory west of South-Carolina, and south of the south boundary of the tract ceded to the United States by that state. All this tract was declared to be the property of the free citizens of Georgia, and inalienable but by their consent. Provision was, however made for a sale to the United States by the legislature of all west of the Apalachicola, and for the return of the money paid to the state by the Yazoo purchasers.

The propriety and dignity of these proceedings on the part of the state government do not now come in question. How far it could be properly alleged that the representatives of Georgia had been corrupted; that the sovereign power for the time being had proved faithless to itself, are questions of deep moment, and highly proper for the consideration of the historian of that state.

These are questions, however, which could only be mooted between the state and those who were actually concerned in corrupting its legislature; and their decision could not affect the bona fide purchasers from the original grantees. They denied, and with good reason, the power of a succeeding legislature to deprive them of their vested rights, and threatened to bring the matter before the judicial tribunals for adjudication.

This was afterwards done in the case of Fletcher vs. Peck. This was a case stated for the decision of the Supreme Court of the United States, reported 6th Cranch, 87.

Many material facts invalidating the title of Georgia were there omitted ; but the question as to the right of the legislature to annul the contract, so as to deprive innocent purchasers of their vested rights, was distinctly presented to the court, and decided in favour of the purchasers. So far, therefore, as Georgia had a title to the lands, thus vested in the bona fide holders of Yazoo shares, it had conveyed it away by the act of its legislature.

In this state of affairs, congress found it necessary to take measures to secure the rights of the United States, and on the 7th of April, 1798, an act was passed erecting the tract above alluded to as comprehended within the secret article, into a territory, and establishing a government for the same.*

With a title thus complicated, and embarrassed by the claims of the Union and of its own grantees, it was obvious that but little could be done by the state of Georgia. The state government, therefore, entered into a negociation with the general government for a cession of its claim, and, in 1802, concluded the celebrated agreement, by which its title was finally extinguished.

The terms of this agreement are as follows, viz :

Georgia ceded all her claim to the lands beyond her present western line, upon condition,

1st. That the United States should pay to that state $1,250,000 out of the first net proceeds of the lands ceded, on account of the expenses to which it had been put in relation to that territory.

2d. That all persons settled before October 27th, 1795,

* 3d vol. United States' Laws, 89.

within that territory, under British or Spanish grants, or claiming under an act of the Georgia legislature, passed in 1785, laying out a county by the name of Bourbon, should be confirmed in their possessions.

3d. That all the lands ceded should be a common fund, excepting 5,000,000 acres, which the United States, before twelve months had elapsed after the assent of Georgia to that agreement, might appropriate for the purpose of satisfying the Yazoo claimants.

4th. That the United States should, at their own expense, extinguish for the use of Georgia the Indian title to all the lands within the state, "as early as the same could be obtained on reasonable terms."

5th. That the territory ceded should be admitted into the Union as a state as soon as expedient, and that it should be governed as the north-west territory, with the exception that slavery should not be prohibited.

The United States accepted of this cession upon these conditions, and on their part, ceded to Georgia all their claim to the territory east of the boundary line described in the agreement, and not lying within any other state. Upon these terms the claim of Georgia was ceded to the United States; and $5,000,000 were afterwards paid to the Yazoo purchasers, upon the relinquishment of their claims, both to the land, and to the money paid by them into the Georgia treasury. This amount was debited to the state as part of the $1,250,000 due under the above agreement.

Until this agreement, the general government had invariably refused to make any payments, or to extinguish any Indian title for the benefit of a particular state. It had been liberal to all states claiming vacant lands, in assenting to their reservations, and confirming their grants made under the impression that their title was good. But whilst it freely consented to these sacrifices for the sake of harmony, and out of delicacy to the state governments, it steadily

witheld all assent to the validity of their claims. Even in in this agreement, the payment to Georgia, was made upon the ground, that the state had expended that sum in relation to the ceded territory, and not to purchase its title. The payment of the Yazoo claim, was also a sacrifice at the shrine of public peace, and to quiet the clamour at the inconsistent course of the Georgia legislature. Whether the agreement to extinguish the Indian title, was not made in order to take away all future pretence on the part of the state to interfere with an independent Indian nation, is worthy of consideration. The guarded wording of that provision, demonstrates that the United States were fully sensible of their existing obligations towards the Indians; and though it was a departure from their uniform policy, it was a qualified departure, which might be justified by the strong desire felt by the general government to do justice to the claims of the aborigines, undisturbed by the interference of a state government, which had adopted such peculiar notions as to its rights and its obligations. At that era, most of the Indian tribes within the undisputed limits of the old thirteen states, had lost their independent character. Only in that part of the country to which the United States, and Georgia, had laid mutual claim, existed independent Indian tribes, with whom the general government had formed treaties guaranteeing their possessions, and defining their respective rights. In the new states, and in the United States territory, these rights were defined by compact and agreements. As these southern Indians occupied territory claimed by the United States and by Georgia, in agreeing upon the dividing line, and mutually ceding to each, the territory on the respective sides of that line; the United States and Georgia also agreed upon the manner and the agency by which the Indian titles should be extinguished.

In assenting to that agreement, the general government

afforded another proof of its extreme desire to conciliate and persuade, instead of coercing. Its title to a great portion of the ceded territory was unquestionable; and to the residue, as well as to a large portion within the present limits of the state of Georgia, it had a claim supported upon infinitely stronger grounds than a parchment to a royal deputy. The only consideration therefore, to the United-States for the obligations they assumed, was the desire of the general government to preserve the harmony of the country, and this especially, was the consideration for their agreement to extinguish the Indian title.

This agreement was necessarily qualified by the subsisting obligations of the United States, and if the fair and faithful fulfilment of their Indian treaties, compelled them to perpetuate the aboriginal claim to the soil; the complete performance of their agreement with Georgia, was not only postponed, but its postponement was expressly provided for by the terms of that agreement.

The treaty-making power presented the means, and the only means of performance on the part of the United States, and the prohibition of that power to any separate state, prevented all interference on the part of Georgia.

In this manner was finally adjusted all the territorial claims of the United States by cessions on the part of the states having claims to the back lands. What would have been the result of this business without such compromises, it is unnecessary to enquire. The want of some efficient tribunal to determine upon the titles of the conflicting claimants, and to enforce the rights of the confederacy, induces the belief that the law of the strongest would have prevailed. It is, however, less difficult to define the rights of the respective parties.

They did not depend, upon the obscure and equivocal terms of grants from a monarch on the opposite side of the Atlantic. These were only evidences, together with royal

proclamations, legislative acts, and Indian purchases, of what had been the customary and constitutional jurisdiction of the local legislatures, and testimony by no means conclusive as to limits and boundaries, still less as to sovereignty and property in the soil. Those rested upon stronger foundations—upon the right which God had given to man to occupy and cultivate the earth; upon the right which the colonists had acquired by their labour in reclaiming the wilderness, and their valour in defending it against their foes, whether civilized or savage. Upon these immutable rights they relied, when the British ministers acting upon these common law doctrines, which gave effect to the royal charters, undertook to make them the Helots of the empire. From that moment they commenced their political existence upon a new principle. Their charters, excepting where altogether independent of the crown, were thrown aside as from a polluted source; their independence was declared; and upon their own right hands, under a protecting Providence, they depended for the vindication of their freedom and property.

These, together with a certain participation in their local legislation, belonged to them before the revolution. Their acquisitions were entire independence; the right of regulating their relations with foreign powers, and Indian tribes; sovereignty over the territory within the boundaries described in the treaty of peace with Great Britain, and the right of extinguishing the Indian title within those limits, with the consent of the aborigines. These acquisitions were made by the common efforts of the United States, and became vested in the people of the country represented in congress, according to the articles of confederation. In these articles will be found the provisions, by which the powers of the general government over those acquisitions were defined. Afterwards, these powers were more clearly

defined, and other powers over certain subjects of local legislation, granted to congress by the federal constitution. In neither of these instruments, from the difficulty of determining upon a satisfactory method of arranging the matter, was any provision inserted concerning territorial acquisitions; but the rights and claims of all parties were reserved for amicable adjustment. They are now settled by tacit or express agreement between the general and local governments, and after a fair and impartial examination of the charters and other evidences by which the states proved their titles to the territories under their jurisdiction when provinces.

In agreeing upon the lines between those territories and the back lands to which the Indian title had not been extinguished, and of which the ultimate dominion had belonged to the crown until it was ceded to the United States in their confederate character, the general government has invariably shown itself more desirous of preserving the harmony of the country, and of consulting the reasonable expectations of the several states, than of maintaining its own territorial rights. This disposition was particularly manifested in the agreement with Georgia. If the western line of that state had been prescribed only with a reference to the right of Georgia, as established by her charter, and the other evidences of title cited in behalf of the state, it would have been run in the following manner, viz :—Beginning at the south boundary of North Carolina about the 84th degree of longitude, and thence along the Apalachian ridge to the head of the Ocmulgee, or the southern branch of the Alatamaha, and down that river to the great turn to the east opposite Jacksonville, and thence in a straight line to the head of the St. Mary's river. A line which would have run through the present centre of the state, and east of the Creek and Cherokee reservations.

To the territory east of this line, and to that only, Georgia had an unquestionable title. All the rest was an acquisition from Great Britain; and that it was considered so even by Georgia herself is manifest from the fact, that in the agreement of 1802, the commissioners of that state thought it necessary to procure from the United States a cession of its title to the territory east of the line actually agreed upon.

No cession on the part of the Union was thought necessary in any of the territory reserved by the other states, excepting in the case of the north-west reservation by Connecticut. Here was a reservation of claims beyond the unquestioned limits of a state, similar to the reservation of the Georgia claim to the territory between her legitimate boundary and her boundary by compact, and to both the United States ceded their title; conveying to Connecticut, the property in the soil, and to Georgia the sovereignty and property, subject to the Indian title, which was to be extinguished by the United States, when it could be done consistently with their previous engagements. Until that be done, the sovereignty of Georgia over that territory is not complete. This is a consequence of her acceptance of territory beyond her unquestionable limits, by a cession from the United States, and to which she is partially subject in common with the other states erected wholly out of the territory of the United States. She has indeed this advantage over them, that the United States are bound to extinguish the Indian title for the benefit of the state; but this agreement is subject to so many conditions and limitations, that in truth, the claims of Georgia under it, are wholly dependent upon the decision of the Creeks and Cherokee nations. If that consent can be fairly obtained, it certainly will be. The same liberal feeling on the part of the general government, which created the claims of Georgia, will no doubt cause them to be satisfied, if it can be done

consistently with the previous obligations of the United States.

If not, the land lottery should be postponed to a more convenient season. The obligations of congress to their constituents and to mankind, are of a most imperious nature. To their care the national honor and puhlic faith are entrusted, and whatever may be the extremity, let it always be remembered that JUSTICE should come before GENEROSITY.

APPENDIX.

(A)

A copy of the Proclamation of the Governor of Virginia, granting lands on the Ohio, was sent to Governor Hamilton, of Pennsylvania, who wrote a letter in reply, of which the following is an extract.

Dated the 13th of March, 1754. "The invasions, &c. having engaged me to inquire very particularly into the bounds and extent of this province westwardly; I have from thence the greatest reason to believe that the fort and lands, intended to be granted, are really within the limits of Pennsylvania."

"March 21st, 1754, governor Dinwiddie writes in reply, 'I am much misled by our surveyors, if the forks of Monongialo be within the limits of your Proprietor's grant; I have for some time wrote home to have the line run, to have the boundaries properly known, that I may be able to appoint magistrates on the Ohio, (if in this government,) &c."

Extract from a Message delivered by Governor Delancy to the Assembly of New-York, April 24, 1754.

"I look on the late attempts of the French to be an encroachment upon his Majesty's undoubted territory. The lands lying between the Seneca's country, the lake Erie, and the river Ohio, formerly belonged to a nation of Indians, called the Erics, whom the five nations conquered and extirpated, and thus became masters of their lands; and by the treaty of Utrecht the French acknowledged those Indians called the Five Nations, or Cantons, to be subjects of the dominion of Great Britain; and, therefore, the two forts the French have built, are evidently an invasion of his Majesty's territories, though, perhaps, not so clearly within the limits of any colony in particular: but from the idea I have formed to myself of that part of the country, those forts seem to be within the Pennsylvania government."

(B)

Extract from a Circular Letter from the Continental Congress to their Constituents, unanimously adopted Sept. 13, 1799.

"Whether the United States have put themselves in a political capacity to redeem their bills, is a question which calls for more full discussion.

"Our enemies, as well foreign as domestic, have laboured to raise doubts on this head. They argue that the confederation of the states remains yet to be perfected; that the union may be dissolved, Congress be abolished, and each state, resuming its delegated powers, proceed in future to hold and exercise all the rights of sovereignty appertaining to an independent state. In such an event, say they, the continental bills of credit, created and supported by the union, would die with it. This position being assumed, they next proceed to assert this event to be probable, and in proof of it, urge our divisions, our parties, our se-

parate interests, distinct manners, former prejudices, and many other arguments equally plausible and equally fallacious. Examine this matter.

"For every purpose essential to the defence of these states in the progress of the present war, and necessary to the attainment of the objects of it, these states now are as fully, legally, and absolutely confederated, as it is possible for them to be. Read the credentials of the different delegates who composed the Congress in 1774, 1775, and part of 1776. You will find that they establish an union for the express purpose of opposing the oppressions of Britain, and obtaining redress of grievances. On the 4th of July, 1776, your representatives in Congress, perceiving that nothing less than unconditional submission would satisfy our enemies, did, in the name of the people of the thirteen United Colonies, declare them to be free and independent states, and 'for the SUPPORT of that declaration, with a firm reliance on the protection of Divine Providence, did mutually pledge to each other their LIVES, their FORTUNES, and their SACRED HONOR." Was ever confederation more formal, more solemn, or explicit? It has been expressly assented to and ratified by every state in the union. Accordingly, for the direct SUPPORT of this declaration, that is, for the support of the independence of these states, armies have been raised, and bills of credit emitted, and loans made, to pay and supply them. The redemption, therefore, of these bills, the payment of these debts, and the settlement of the accounts of the several states for expenditures or services for the common benefit, and in this common cause, are among the objects of this confederation; and consequently, while all or any of its objects remain unattained, it cannot, so far as it may respect such objects, be dissolved, consistent with the laws of God or man.

"But we are persuaded, and our enemies will find that our union is not to end here. They are mistaken when they suppose us kept together only by a sense of present danger. It is a fact which they only will dispute, that the people of these states were never so cordially united as at this day. By having been obliged to mix with each other, former prejudices have worn off, and their several manners become blended. A sense of common permanent interest, mutual affection, (having been brethren in affliction,) the ties of consanguinity daily extending, constant reciprocity of good offices, similarity in language, in governments, and therefore in manners, the importance, weight and splendour of the union, all conspire in forming a strong chain of connexion, which must for ever bind us together. The United Provinces of the Netherlands, and the United Cantons of Switzerland, became free and independent under circumstances very like ours; their independence has been long established, and yet their confederacies continue in full vigour. What reason can be assigned why our union should be less lasting? or why should the people of these states be supposed less wise than the inhabitants of those? You are not uninformed that a plan for a perpetual confederation has been prepared, and that twelve of the thirteen states have already acceded to it. But enough has been said to show that for every purpose of the present war, and all things incident to it, there does at present exist a perfect solemn confederation, and therefore that the states now are and always will be in political capacity to redeem their bills, pay their debts, and settle their accounts."

(C)

"OCTOBER 26, 1787.—Instructions to the Commisioners for negotia-

ting a treaty with the Tribes of Indians in the Southern Department, for the purpose of establishing Peace between the United States and the said tribes.

" GENTLEMEN,

" Several circumstances rendering it probable that hostilities may have commenced, or are on the eve of commencing, between the state of North Carolina and the Cherokee nation of Indians, and between the state of Georgia and the Creek nation of Indians, you are to use every endeavour to restore peace and harmony between the said states and the said nations, on terms of justice and humanity.

" The great source of contention between the said states and the Indian tribes, being boundaries, you will carefully inquire into and ascertain the boundaries claimed by the respective states. And although Congress are of opinion that they might constitutionally fix the bounds between any state and an independent tribe of Indians, yet unwilling to have a difference subsist between the general government and that of the individual states, they wish you so to conduct the matter, that the states may not conceive their legislative rights in any manner infringed; taking care at the same time that whatever bounds are agreed upon, they may be described in such terms as shall not be liable to misconstruction and misrepresentation, but may be made clear to the conceptions of the Indians as well as whites.

" The present treaty having for its principal object the restoration of peace, no cession of land is to be demanded of the Indian tribes."

(D)

Instructions from the general assembly of Maryland to their Delegates in Congress, directing them not to ratify the articles of Confederation. Dec. 15, 1778.

" We think it our duty to instruct on the subject of the confederation, a subject in which, unfortunately, a supposed difference of interest has produced an almost equal division of sentiments among the several states composing the union. We say a supposed difference of interests, for if local attachments and prejudices, and the avarice and ambition of individuals, would give way to the dictates of a sound policy, founded on the principles of justice (and no other policy but what is founded on those immutable principles deserves to be called sound) we flatter ourselves, this apparent diversity of interests would soon vanish, and all the states would confederate on terms mutually advantageous to all; for they would then perceive that no other confederation than one so formed can be lasting Although the pressure of immediate calamities, the dread of their continuance from the appearance of disunion, and some other peculiar circumstances, may have induced some states to accede to the present confederation, contrary to their own interests and judgments, it requires no great share of foresight to predict, that when those causes cease to operate, the states which have thus acceded to the confederation will consider it as no longer binding, and will eagerly embrace the first occasion of asserting their just rights, and securing their independence. Is it possible that those states who are ambitiously grasping at territories, to which in our judgment they have not the least shadow of exclusive right, will use with greater moderation the increase of wealth and power derived from those territories, when acquired, than what they have displayed in their endeavours to acquire them? We think not. We are convinced the same spirit which prompted them to insist on a claim so extravagant, so repugnant to every principle of justice, so incompatible with the general welfare

of all the states, will urge them on to add oppression to injustice. If they should not be incited by a superiority of wealth and strength to oppress by open force their less wealthy and less powerful neighbours; yet depopulation, and consequently the impoverishment of those states will necessarily follow, which, by an unfair construction of the confederation, may be stripped of a common interest, and the common benefits derivable from the western country. Suppose, for instance, Virginia indisputably possessed of the extensive and fertile country to which she has set up a claim, what would be the probable consequence to Maryland of such an undisturbed and undisputed possession? They cannot escape the least discerning.

"Virginia, by selling on the most reasonable terms a small proportion of the lands in question, would draw into her treasury vast sums of money; and in proportion to the sums arising from such sales, would be enabled to lessen her taxes. Lands comparatively cheap, and taxes comparatively low, with the lands and taxes of an adjacent state, would quickly drain the state thus disadvantageously circumstanced of its most useful inhabitants; its wealth and its consequence in the scale of the confederated states would sink of course. A claim so injurious to more than one half, if not to the whole of the United States, ought to be supported by the clearest evidence of the right. Yet what evidences of that right have been produced? What arguments alleged in support either of the evidence or the right? None that we have heard of deserving a serious refutation.

"It has been said, that some of the delegates of a neighbouring state have declared their opinion of the impracticability of governing the extensive dominion claimed by that state. Hence also the necessity was admitted of dividing its territory, and erecting a new state under the auspices and direction of the elder, from whom no doubt it would receive its form of government, to whom it would be bound by some alliance or confederacy, and by whose councils it would be influenced. Such a measure, if ever attempted, would certainly be opposed by the other states as inconsistent with the letter and spirit of the proposed confederation. Should it take place by establishing a sub-confederacy, imperium in imperio, the state possessed of this extensive dominion must then either submit to all the inconveniences of an overgrown and unwieldy government, or suffer the authority of Congress to interpose at a future time, and to lop off a part of its territory, to be erected into a new and free state, and admitted into the confederation on such conditions as shall be settled by nine states. If it is necessary for the happiness and tranquillity of a state overgrown, that Congress should hereafter interfere and divide its territory, why is the claim to that territory now made, and so pertinaciously insisted on? We can suggest to ourselves but two motives; either the declaration of relinquishing at some future period a proportion of the country now contended for, was made to lull suspicion asleep, and to cover the designs of a secret ambition, or, if the thought was seriously entertained, the lands are now claimed to reap an immediate profit from the sale. We are convinced, policy and justice require, that a country unsettled at the commencement of this war, claimed by the British crown, and ceded to it by the treaty of Paris, if wrested from the common enemy by the blood and treasure of the thirteen states, should be considered as a common property, subject to be parcelled out by Congress into free, convenient, and independent governments, in such manner and at such times as the wisdom of that assembly shall hereafter direct.

"Thus convinced, we should betray the trust reposed in us by our constituents, were we to authorize you to ratify on their behalf the confederation, unless it be farther explained: we have coolly and dispassionately considered the subject; we have weighed probable inconveniences and hardships against the sacrifice of just and essential rights; and do instruct you not to agree to the confederation, unless an article or articles be added thereto in conformity with our declaration. Should we succeed in obtaining such article or articles, then you are hereby fully empowered to accede to the confederation."

(E)

Report of a Committee to which was referred certain Papers relative to the Indian affairs, and a motion of the Delegates from Georgia, August 3d, 1787.

"That the said papers referred to them state, first, that certain encroachments are made on the lands of the Creek and Cherokee nations, by the people of Georgia and North Carolina. Secondly, that there is no regular trade between our citizens and the Indian nations in that department, by which those nations can obtain a certain supply of goods, arms, &c.; that these nations wish to have connexions with the United States only: that their necessities, however, are such, that if they cannot be regularly supplied by our traders, they must listen to the repeated invitations made them to turn their trade to, and to seek supplies from another quarter. That the said motion, among other things, states, that there is reason to apprehend the Creek Indians are meditating a serious blow against the inhabitants of Georgia; and proposes, that it be recommended to that state to use every possible means to preserve peace between her citizens and those Indians; and that Congress resolve, they are bound to draw forth a sufficient number of the forces of the union to punish any nation or tribe of Indians that shall attempt to make war on either of the United States, by attacking or killing any of their citizens. On these subjects the committee observe, that the encroachments complained of, appear to demand the serious attention of Congress, as well because they may be unjustifiable, as on account of their tendency to produce all the evils of a general Indian war on the frontiers. The committee are convinced that a strict inquiry into the causes and circumstances of the hostilities often committed in and near the frontier settlements, ought to be made; that it is become necessary for government to be explicit and decisive; and to see that impartial justice is done between the parties; that justice and policy, as well as the true interests of our citizens, evince the propriety of promoting peace and a free trade between them and the Indians.—Various circumstances show, that the Indians in general, within the United States, want only to enjoy their lands without interruption, and to have their necessities regularly supplied by our traders, and could these objects be effected, no other measures would, probably, be necessary for securing peace, and a profitable trade with those Indians. The committee are not informed what measures have been adopted by the superintendents to promote a regular trade between our people and the Indian nations, or for preventing intrusions upon the lands of the latter, several tribes complain that their land is taken from them, and that they suffer very much for want of such trade. As information relative to these subjects must, principally, come from the frontier settlers, the Indians and traders residing among them, the committee are sensible that facts cannot always be well ascertained; but in the pre-

sent case there is sufficient evidence to show, that those tribes do not complain altogether without cause. An avaricious disposition in some of our people to acquire large tracts of land, and often by unfair means appears to be the principal source of difficulties with the Indians.—There can be no doubt that settlements are made by our people on the lands secured to the Cherokees by the late treaty between them and the United States; and also on lands near the Oconee, claimed by the Creeks; various pretences seem to be set up by the white people for making those settlements, which the Indians, tenacious of their rights, appear to be determined to oppose. The respective titles cannot readily be investigated; but there is another circumstance far more embarrassing, and that is, the clause in the confederation relative to managing all affairs with the Indians, &c., is differently construed by Congress and the two states within whose limits the said tribes and disputed lands are. The construction contended for by those states, if, right, appears to the committee to leave the federal powers, in this case, a mere military; and to make it totally uncertain on what principle Congress is to interfere between them and the said tribes. The states not only contend for this construction, but have actually pursued measures in conformity to it. North Carolina has undertaken to assign land to the Cherokees, and Georgia has proceeded to treat with the Creeks concerning peace, lands, and the objects usually the prinpal ones in almost every treaty with the Indians. This construction appears to the committee not only to be productive of confusion, disputes, embarrassments in managing affairs with the independent tribes within the limits of the states, but by no means the true one. The clause referred to is—"Congress shall have the sole and exclusive right and power of regulating the trade and managing all affairs with the Indians, not members of any of the states; provided that the legislative right of any state, within its own limits, be not infringed or violated." In forming this clause, the parties to the federal compact, must have had some definite objects in view; the objects that come into view, principally, in forming treaties, or managing affairs with the Indians, had been long understood, and pretty well ascertained in this country. The committee conceive that it has long been the opinion of the country, supported by justice and humanity, that the Indians have just claims to all lands occupied by, and not fairly purchased from them; and that in managing affairs with them, the principal objects have been those of making war and peace, purchasing certain tracts of their lands, fixing the boundaries between them and our people, and preventing the latter settling on lands left in possession of the former. The powers necessary to these objects appear to the committee to be indivisible, and that the parties to the confederation must have intended to give them entire to the union, or to have given them entire to the state. These powers, before the revolution, were possessed by the king, and exercised by him, nor did they interfere with the legislative right of the colony within its limits; this distinction which was then, and may be now taken, may perhaps serve to explain the proviso, part of the recited clause. The laws of the state can have no effect upon a tribe of Indians, or their lands, within the limits of the state, so long as that tribe is independent, and not a member of the state, yet the laws of the state may be executed upon debtors, criminals, and other proper objects of those laws, in all parts of it; and therefore the union may make stipulations with an such tribe, secure it in the enjoyment of all or part of its lands, without infringing upon the legislative right in

question. It cannot be supposed the state has the powers mentioned, without making the recited clause useless, and without absurdity in theory as well as in practice; for the Indian tribes are justly considered the common friends or enemies of the United States, and no particular state can have an exclusive interest in the management of affairs with any of the tribes, except in some uncommon cases. The committee find it difficult to reconcile the said construction of the recited clause, made by the two states, and their proceedings before mentioned, especially those of Georgia, with what they conceive to be the intentions of those who made the said motion; for the committee presume that the delegates of Georgia do not mean that Congress is bound to send their forces to punish such nations as the state shall name, to act in aid of the state authority; to send her forces and recal them as she shall see fit, to make war or peace; such an idea cannot be consistent with the dignity of the union, and the principles of the federal compact. But the committee conceive that it is the opinion of the honourable movers, and also the general opinion, that all wars and hostile measures against the Creeks, or any other independent tribe of Indians, ought to be conducted under the authority of the union, at least where the forces of the union are employed, that the power to conduct a war clearly implies the power to examine into the justice of the war, to make peace, and adjust the terms of it; and that, therefore, the terms or words of the said motion, if it be adopted by Congress at all, must be varied accordingly. But whatever may be the true construction of the recited clause, the committee are persuaded that it must be impracticable to manage affairs with the Indians within the limits of the two states, so long as they adhere to the opinions and measures they seem to have adopted. The difficulties, in fact, exist; the states think it is their duty to counteract the powers of Congress, when carried, in conducting affairs with those Indians, beyond those narrow limits which the said states prescribe; the question therefore is, how shall these difficulties be avoided in a manner most agreeable to both Congress and the states? The committee discern but two ways practicable; the one is for the two states to make liberal cessions of territory to the United States; the other is, for those states to accede to Congress's managing, exclusively, all affairs with the Cherokees, Creeks, and other independent tribes within the limits of the said states, so that Congress, in either case, may have the acknowledged power of regulating trade, and making treaties with those tribes, and of preventing on their lands, the intrusions of the white people. That of making liberal cessions of territory, all things considered, appears to be the most eligible, and likely to meet the approbation of the two states; several circumstancees induce the committee to think this the best mode; they presume the two states will act on liberal principles, and adopt measures founded in sound policy, and calculated to promote the national interest, they will consider that the lands proposed to be ceded, were arrested from Great Britain by the common exertions of the confederacy and that other states have ceded lands to the union in a similar situation, which are now selling for the common benefit of all the states. The committee conceive that several other considerations cannot escape the observation of the two states, which may be urged in favour of the cessions; among other things of importance to those states. as well as to the union, must be the advantages arising from putting the management of Indian affairs into the hands of Congress alone, and preventing irregular and dispersed settlements on the lands proposed to be ceded. The

committee believe that the two states, upon re-considering the subject, will be disposed to follow the liberal example of the other states in a similar situation, and, especially, as it will probably appear to the two states, that by making the proposed cessions, the difficulties they now experience will be removed, that is, the controversies respecting Indian affairs, and those dispersed settlements which tend to render the governments weak and feeble, and to produce expensive and calamitous wars with the Indians. The committee further observe, on the subjects referred to them, that it is probable the Indians in the southern department will turn their trade to Florida, unless regularly supplied by our citizens and traders; and that the attention of the superintendent in that department ought to be seasonably directed to the encouragement and promotion of a regular trade between our citizens and those Indians. That the dispute between Georgia and the Creeks is become so serious, that it is probable a war will ensue, and the interference of the union become necessary, unless early measures be adopted for settling the controversy respecting the said Oconee lands; the committee think, therefore, that it should be recommended to that state, to use all possible means for preserving peace with the Creeks, and that they and the Cherokees be informed, that Congress are pursuing measures to adjust all disputes about their lands. That Georgia be informed that Congress consider the union bound by the federal compact to protect every part of the nation, as well against the unjust and unprovoked attacks of the independent Indians within the United States, as against foreign powers; that Congress, however, can never employ the forces of the union in any cause, the justice of which they are not fully informed and convinced, nor constitutionally interfere in behalf of the state against any such independent tribe, but on the principle that Congress shall have the sole direction of the war, and the settling of all the terms of peace with such Indian tribe. Whereupon the committee suggest the following resolutions: *Resolved*, That it be, and it hereby is earnestly recommended to the states of North-Carolina and Georgia, to make liberal cessions of territory to the United States, for their common benefit, to be governed and disposed of in the same manner as the territory of the United States, north-west of the river Ohio, is, and shall be governed and disposed of. *Resolved*, That it be recommended to the state of Georgia, to use all possible means to preserve peace and friendship between the citizens of that state and the upper and lower Creek Indians, consistent with the principles of the confederation. *Resolved*, That Congress esteem it their duty to consider the causes and circumstances of any dispute or hostile proceedings between any state, or the citizens thereof, and any Indian tribe or tribe of Indians within the limits of the United States, not members of any of the states, and that Congress is bound to employ the forces of the union to punish any such tribe or tribes which shall make unjust and unprovoked attacks upon any part of the United States. *Resolved*, That the superintendent of Indian affairs in the southern department be directed, without delay, to inform the Creeks and Cherokees, that Congress are pursuing measures for settling all disputes about the lands claimed by them and the white people; that he be directed to inform the Indians in his department, that Congress is always disposed to hear their complaints, which must be made through the superintendent, to redress their grievances, and to preserve peace and lasting friendship with them; and that he be directed to report the measures that have been adopted for supplying those Indians with merchandise.